Acta Sanctae Sedis

Acts of the Holy See

Holy See; Vatican

An English translation of the Latin edition
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[*Latin ed. p. 1*]

ACTS OF THE HOLY SEE, CONCISELY COMPILED AND ILLUSTRATED WITH CARE BY JOSEPH PENNACCHI AND VICTOR PIAZZESI, OR:

Acts, juridical and more solemn, emanating directly from the Supreme Roman Pontiff: these are acts which, among those that can be made public by law, are either Decrees, or Instructions, or Responses, and other similar matters; especially, expositions and resolutions of cases from various Sacred Congregations of Cardinals, carefully compiled to contribute to the accurate understanding and observance of ecclesiastical law: finally, other juridical matters, by which those things which may present difficulty in the aforementioned acts are suitably explained, or which further contribute to the knowledge of existing law: for the benefit of those who diligently study the laws of the Church, and who labor diligently in the governance of the Christian flock, or in cultivating the vineyard of the Lord.

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[*Latin ed. p. 3*]

BY THE DIVINE PROVIDENCE OF OUR MOST HOLY LORD LEO.

ENCYCLICAL LETTER

TO THE PATRIARCHS, PRIMATES, ARCHBISHOPS, AND BISHOPS OF THE ENTIRE CATHOLIC WORLD,

GREETINGS AND COMMUNION WITH THE APOSTOLIC SEE.

LEO XIII.

Venerable Brothers, Greetings and Apostolic Benediction.

That long and most grievous war, undertaken against the authority of

the Divine Church, has, as was to be expected, reached its present state, namely, a common peril to human society, and especially to the civil government, in which the public safety is most strongly supported.

— This is particularly evident in our own age. Popular desires now more boldly defy the power of the empire than formerly; and there is so much license everywhere, so many seditions and disturbances, that those who govern the state not only often find obedience denied to them, but it seems that even their safety is not sufficiently protected.

For a long time, efforts have been made to bring about the contempt and hatred of the multitude; and now that the flames of envy have been kindled, the lives of the highest rulers have been sought on several occasions, either by secret plots or by open violence. The entire of Europe was horrified by the infamous death of the most powerful Emperor; and still astonished by the magnitude of the crime, reckless men do not hesitate to threaten and terrify the rulers of Europe.

The events which are before our eyes, which gravely affect the common good, concern us with solicitude, concerning the safety of the princes, and

[*Latin ed. p. 4*]

4. LET US OBSERVE how nearly the tranquility of kingdoms, together with the safety of the people, is imperiled almost every hour. — Yet, the divine power of the Christian religion has produced excellent supports for the stability and order of the republic, having penetrated into the morals and institutions of states. A not inconsiderable and not the least of the fruits of this power is the equitable and wise moderation of rights and obligations among rulers and the people. For in the precepts and examples of our Lord Christ, there is a wonderful power to restrain both those who rule and those who are ruled in their duties, and to maintain among them that concord and almost unity of will, from which arises a tranquil and undisturbed course of public affairs. — Therefore, since we have been appointed by the grace of God to govern the Catholic Church, guardian and interpreter of the doctrines of Christ, We judge it fitting, Venerable Brothers, publicly to declare what the Catholic truth demands in this matter; and from this, it will also emerge by what means and in what manner public safety should be promoted in so formidable a state of affairs. Although man, incited by a certain arrogance and obstinacy, often strives to cast off the restraints of authority, he has never yet been able to achieve it. It is necessary for some to preside over all human associations and communities; lest the society, deprived of its beginning or head, be dissolved and prevented from reaching the end for which it was born and established. But if it could not be achieved that political power be removed from the midst of civil societies, certainly all arts should be employed to diminish its power and majesty; and this especially in the 16th century, when the novelty of opinions deceived many. After that time, not only did the multitude strive to obtain

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greater freedom than was due to them; but also the origin and constitution of civil human society seemed to be devised according to their own will. Indeed, more recent ones, following in the footsteps of those who in the preceding century assumed the name of philosophers, assert that all power belongs to the people; therefore, those who exercise it in the state do not use it as their own, but as it has been entrusted to them by the people, and indeed according to this law, that it may be revoked by the will of the people themselves, by whom it was entrusted. But Catholics dissent from these views, holding that the right to rule is derived from God, as from a natural and necessary principle. It is also important to note here that those who are to govern the republic can, in certain cases, be chosen by the will and judgment of the people.

[*Latin ed. p. 5*]

ENCYCLICAL LETTER 5 to the multitude, without opposition or contradiction to Catholic doctrine. By this very delight, the prince is designated, but the rights of principality are not conferred; nor is authority mandated, but rather it is established by whom it shall be exercised. — Nor is inquiry made here concerning the forms of republics; for it is nothing to the point whether the Church approves of a principality, whether of one or of many, provided it be just, and directed to the common good. Therefore, with justice preserved, it is not forbidden to peoples to adopt that form of republic which is more suited to their own nature, or to the institutions and customs of their ancestors. Furthermore, with regard to political power, the Church rightly teaches that it originates from God; for she finds it clearly attested in the sacred Scriptures and in the monuments of Christian antiquity; nor can any doctrine be conceived which is more in accordance with reason, or more conducive to the salvation of princes and peoples. Indeed, the books of the Old Testament confirm in many places that human power has its source in God. "By me kings reign, and by me princes decree justice" (1). And elsewhere: "Give ear, ye rulers of the nations, for power has been given to you by God, and strength from the Most High" (2). And in the Book of Ecclesiasticus, it is written: "God has appointed a ruler over every nation" (3). — These things, which had been taught by God, were gradually obscured by the pagan superstitions; which, as they corrupted many true things and notions, so also they corrupted the German form and beauty of principality. Afterwards, when the Christian Gospel shone forth, truth overcame falsehood, and it began to shine again from whence all authority flows, the most noble and divine principle. — To Him who stood before Him and proclaimed the power to condemn or acquit, the Lord Christ answered: "You would have no power over me, unless it had been given to you from above" (4). St. Augustine, explaining this passage, says: "Let us learn," he says, "that what He said, the Apostle also taught, that there is no power unless it be from God" (5). The teachings and precepts of Jesus

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Christ, the incorrupt voice of the Apostles, resounded like an image. To the Romans, subject to the power of the Ethnic princes, the Apostle Paul expressed a sentiment of great elevation and gravity:

(1) Proverbs 8:15-16.

(2) Wisdom 6:3-4.

(3) Ecclesiasticus 17:14.

(4) John 19:11.

(5) Tractate CXVI on John, n. 6.

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6. ENCYCLICAL LETTER: There is no power except from God; from this, it rightly concludes: "The prince is a minister of God" (1). The Fathers of the Church diligently strived to profess and propagate this very doctrine, to which they had been instituted. "We do not attribute the power of giving kingdoms and empires, except to God alone," says St. Augustine (2). St. John Chrysostom agrees: "I say that principalities and the fact that some rule and others are subject, are not carried out by chance and arbitrarily, but by divine wisdom" (3). St. Gregory the Great also testified to this, saying: "We acknowledge that power is given to emperors and kings by God" (4). Indeed, the holy Doctors also undertook to illuminate these very precepts with the light of natural reason, so that even those who follow reason alone may see them as entirely right and true. And indeed, nature, or rather, the Author of nature, God, commands that men live in civil society; this is clearly demonstrated by the great power of speech that unites society, by the many innate desires of the soul, and by the many necessary and important things that men cannot achieve in solitude, but which they attain when joined and associated with others. Now, a society cannot exist or be understood without someone tempering the wills of individuals, so that they may become one from many, and directing those wills rightly and in order towards the common good; therefore, God willed that there should be those who rule over the multitude in civil society. And it is also greatly true that those who administer the republic by their authority must be able to compel citizens to obey, so that disobedience is clearly a sin. However, no man has within himself, or from himself, the power to restrain the will of others with such authority. This power belongs only to God, the Creator and Legislator of all things; and those who exercise it must, as it were, exercise it as if it were communicated to them by God. He is the only Legislator and Judge, who can destroy and save (5). This is evident in every kind of power. It is so well known that the power held by priests originates from God, that among all peoples, they are considered ministers of God and are called by that name. Similarly, the power of the father of a family retains a certain image and form of the authority that is in God, from whom all fatherhood (1) Romans XIII, 1, 4. (2) De Civ. Dei, Book V, Chapter 2. (3)

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In Epistle to Koro, Homily XXIII, n. 1. (4) Epistles, Book II, Epistle 61. (5) James IV, 12.

[*Latin ed. p. 7*]

ENCYCLICAL LETTER 7, in heaven and on earth, are called (1). But in this way, different kinds of power have remarkable similarities, since whatever exists anywhere as authority and dominion is derived from one and the same origin, namely, from the Creator and Lord of the world, who is God. Those who claim that civil society is born from the free consent of men, seeking the origin of its authority from the same source, say that each has relinquished something of his own right, and that each has voluntarily submitted his power to a single authority, to whom the sum of their rights has been transferred. But it is a great error to fail to see what is manifest: that men, since they are not a wandering species, are born into a natural community, independent of their free will; and furthermore, the pact they proclaim is openly fictitious and invented, and does not possess the political power necessary to provide the strength, dignity, and firmness required for the welfare of the republic and the common good of the citizens. But this authority will possess all these virtues and safeguards only if it is understood to flow from God, the most august and most holy source. No other view can be found that is either truer or more useful. For the power of the rulers of the state, if it is indeed a communication of divine power, gains this very quality, continuously acquiring greater human dignity: not that impious and absurd dignity that ethnic emperors sometimes sought by claiming divine honors, but a true and solid dignity, received as a gift and a divine benefit. Therefore, it is necessary for citizens to obey and listen to their rulers, not so much out of fear of punishment, as out of reverence for their majesty, nor out of flattery, but out of a sense of duty. In this way, the authority will be placed on a much firmer foundation. For citizens who feel the force of this duty must necessarily avoid wickedness and disobedience, because they must believe that those who resist political authority are resisting the divine will, and that those who refuse honor to their rulers are refusing it to God himself. The Apostle Paul instructed the Romans specifically in this regard: to whom he wrote with such authority and weight about the need to show reverence to the highest authorities, that nothing seems to be more important to command. Let every soul be subject to higher powers: for there is no power that is not from God: and such powers as there are, are ordained by God. Therefore, whoever resists the power of God, resists the ordinance of God. But those who resist, incur damnation upon themselves... (1) To the Ephesians, III, Hi.

[*Latin ed. p. 8*]

8. ENCYCLICAL LETTER. Therefore, be subject, not only for wrath, but also for conscience (1). And agreeing with this is the most excellent sen-

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timent of the Prince of the Apostles, Peter: "Render therefore to all their dues: to whom, tribute; to whom, custom; to whom, fear; to whom, honor; to whom, power, as unto the Lord" (2). The only reason for men not to obey is if they are commanded to do something that openly contradicts natural or divine law: for everything in which natural law or the will of God is violated, it is equally wrong to command and to do. Therefore, if it should happen that someone is compelled to choose between two evils, namely, either to disobey the commands of God or of rulers, obedience must be rendered to Jesus Christ, who says, "Render therefore to Caesar the things that are Caesar's, and to God the things that are God's" (3), and, following the example of the Apostles, one must courageously respond: "It is necessary to obey God rather than men" (4). However, those who behave in this manner should not be considered to have abandoned obedience; for if the will of the rulers conflicts with the will and laws of God, they exceed the bounds of their power and pervert justice: and their authority is then invalid, for where there is no justice, there is no authority. In order that justice may be maintained in the government, it is of great importance that those who administer the state understand that political power was born not for the benefit of any individual, but for the common good; and that the administration of the republic should be carried out for the benefit of those to whom it has been entrusted, and not for the benefit of those who are entrusted with it. Rulers should take the best example from God Almighty, from whom they receive their authority; and, presenting themselves to the people with equity and fidelity, reflecting the image of God in the administration of the republic, they should apply paternal charity and severity to that which is necessary. For this reason, the oracles of the Holy Scriptures warn: that they must sometimes give an account of themselves to the King of kings and Lord of lords; and that if they neglect their duty, they cannot escape the severity of God in any way. The Most High will examine your works and scrutinize your thoughts. For when you were ministers of that altar, you did not judge rightly... and it will soon become clear to you that a very severe judgment will befall those who are in power... For God does not spare the person of anyone, nor does He fear the greatness of anyone, for the small and the great (1) Romans XIII, 1, 2, "5. (2) 1 Peter II, 13-15. (3) Matthew XXII, 21. (4) Acts V, 29.

[*Latin ed. p. 9*]

ENCYCLICAL LETTER 9. He Himself cares equally for all. But the stronger one inflicts pain upon the weaker (1). Those who observe these precepts safeguard the republic; all sedition, whether arising from cause or from lust, is removed. Thus, the honor and security of princes, the peace and safety of states, are assured. Furthermore, the dignity of citizens is admirably promoted: for by their obedience, they are permitted to retain that honor which is fitting for human excellence. They understand that,

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according to God's judgment, no one is a slave nor free; that there is one Lord of all, who is rich to all who invoke Him (2): and that they, therefore, are subject to and obedient to princes, because they represent, in a certain way, God, to whom it is proper to serve and to reign. Indeed, the Church has always striven that this Christian form of civil authority should not merely take root in minds, but also be expressed in the public life and morals of the people. As long as pagan emperors held the reins of government, who were prevented from attaining that form of government which we have described, by superstition, she endeavored to instill it into the minds of the people, so that as soon as they embraced Christian institutions, they would also be obliged to live according to these principles. Therefore, pastors of souls, renewing the example of the Apostle Paul, have always diligently taught the people to be subject to princes and authorities, to obey them (3): and also to pray to God for all men, but especially for kings and those who are in high positions: for this is pleasing in the sight of our Savior God (4). And on this matter, the ancient Christians have left behind most excellent testimonies: who, although unjustly and cruelly persecuted by pagan emperors, never failed to conduct themselves obediently and submissively, so that it seemed as if, while they endured cruelty, they offered obedience in return. Such modesty, and such a willingness to obey, was so well known that it could not be obscured by the calumnies and malice of their enemies. Therefore, those who, for the sake of the Christian name, were about to speak publicly before emperors, convinced them of the injustice of punishing Christians by this very argument, namely, that they lived according to the laws, for all to see. Athenagoras boldly addressed Marcus Aurelius Antoninus and his son, Lucius Aurelius Commodus, in this way: "Allow us, who do no wrong, to..."

(1) Sap. VI, 4, 5, 6, 8.

(2) Rom. X, 12.

(3) Ad Tit. III, 1.

(4) I Tim. II, 1-3.

[*Latin ed. p. 10*]

10. The Encyclical Letter, most pious and most just, concerning the conduct we ought to have towards God, and then towards your Empire, compels us to reflect. In like manner, Tertullian declared to the Christians of Lodi that they were the best and most certain friends of the Empire: "The Christian is the enemy of no one, not even of the Emperor, whom, knowing that he has been appointed by God, it is necessary to love, to venerate, and to honor, and to desire his safety along with that of the entire Roman Empire." He did not hesitate to affirm that, within the boundaries of the Empire, the number of enemies had diminished all the more as the number of Christians increased: "Now you have fewer enemies because

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of the multitude of Christians, since almost all the citizens of almost all the cities are Christians." It is also a noteworthy testimony on this same subject in the Letter to Diognetus, which states that Christians at that time were accustomed not only to obey the laws, but in every duty to do more and even perfectly, spontaneously, than they were compelled to do by the laws: "Christians observe the laws that are enacted, and in their manner of life, they surpass the laws." Indeed, there was another reason why the Emperors and Praetors commanded that Christians should deviate from the Christian faith, or in some way fail in their duty: at those times, men preferred to displease God. But in these very circumstances, they were so far from doing anything seditious or despising imperial authority, that they would take only this one thing upon themselves: to declare that they were Christians and to refuse to change their faith in any way. Furthermore, they thought nothing of resisting; but they went peacefully and cheerfully to the rack, so that the magnitude of their souls might correspond to the magnitude of the torments.

— In the same period, the conduct of Christians in the military was also observed. It was the duty of a Christian soldier to combine the highest fortitude with the greatest dedication to military discipline, and to enrich the nobility of his spirit with unwavering loyalty to the Emperor. If anything were demanded of him that was not honorable, such as violating God's laws or turning his sword against fellow disciples of Christ, then he refused to obey, but in such a way that he would prefer to leave the army and die for his religion, rather than oppose public authority through sedition and disturbance. Later, when Christian rulers held power, the Church more and more testified and proclaimed how much it was necessary to...

[*Latin ed. p. 11*]

EPISCOPAL ENCYCLICAL: This [encyclical] possessed the authority of the governing powers, stemming from sanctity; consequently, it was to be the case that, when considering matters of governance, the sacred majesty of the Church would be presented to the people, which would inspire both reverence and love for a greater leader. And for this reason, wise provision was made that kings should initiate sacred ceremonies, as was established by the authority of God in the Old Testament.

However, when the civil society of men, as if resurrected from the ruins of the Roman Empire, revived with the hope of Christian greatness, the Roman Pontiffs, by the institution of sacred power, consecrated political authority in a singular manner. Indeed, this was the greatest addition of nobility to governance; and there is no doubt that this institution has always been, and will always be, beneficial to both religious and civil society, if both rulers and people should always consider what the Church considers.

And indeed, peace and prosperity remained as long as a harmonious friendship persisted between the two powers. If the people should sin by

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causing disturbances, the Church, as a peacemaker, was always present, calling each to their duty, and restraining more vehement desires, either through gentleness or authority. Similarly, if rulers should sin in their governance, the Church would approach the rulers, reminding them of the rights, needs, and just desires of the people, and urging them towards justice, clemency, and benevolence. In this way, it has often been achieved that the dangers of tumults and civil wars have been prevented. In contrast, the doctrines of political power invented by more recent thinkers have already brought great bitterness to men, and it is to be feared that they will bring the ultimate evils in the future. For, to deny that the author of the right to govern is God, is to destroy the most beautiful splendor of political power and to sever its very foundations. And when they say that this right depends on the will of the multitude, they are first deceived by a false opinion, and then they establish the principate on a foundation that is too weak and unstable. For, spurred on by such opinions, the desires of the people become more insolent, and with great detriment to the state, they rush headlong into blind movements and open seditions, and are easily led astray. Indeed, that which they call the Reformation, whose supporters and leaders utterly attacked both sacred and civil power with new doctrines, was followed by sudden tumults and most audacious rebellions, especially in Germania, and with such domestic warfare and slaughter that scarcely a place seemed free from disturbances and bloodshed.

From that heresy arose, in the following century, a philosophy of false name, and the right that...

[*Latin ed. p. 12*]

12. The Encyclical speaks of a new, and ignorant, popular sovereignty, and a license that knows no bounds, which many consider to be true freedom. From these have arisen the neighboring plagues, namely Communism, Socialism, and Nihilism, the most terrible portents and almost the death throes of civil society. Yet, too many strive to amplify the power of these evils, and through the guise of aiding the multitude, they have already ignited not a few fires of misery. These things which we mention here are neither unknown nor very distant. Moreover, this is even more serious, because those in power lack remedies suitable for restoring public order and calming minds, amidst such great dangers. They rely on the authority of laws, and believe that those who disturb the republic should be restrained by the severity of punishments. This is indeed true; but it must be seriously considered that no punishment will ever be sufficient to preserve the republic alone. For, as the most holy Thomas teaches, fear is a weak foundation; for those who are subdued by fear, if an opportunity arises in which they can hope for impunity, they rise up against their rulers all the more fiercely, the more they were restrained against their will by fear alone. Furthermore, excessive fear leads many to despair: and despair

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boldly urges them to attempt anything (1). How true these things are, we have sufficiently perceived through experience. Therefore, a higher and more effective cause for obedience must be employed, and it must be established that laws cannot have a fruitful effect, unless men are impelled by duty, and are moved by the salutary fear of God. This, however, can be achieved most effectively by religion, which, with its own power, flows into the hearts of men, and bends the wills of men, so that those from whom they are governed may adhere to them not only through obedience, but also through goodwill and charity; which is the best guardian of safety in every human society. Therefore, the Roman Pontiffs are rightly judged to have served the common good, in that they have always striven to curb the arrogant, restless spirits of the innovators; and they have often warned how dangerous these are, even to civil society. In this regard, a worthy sentiment to be remembered is that of Clement VII, addressed to Ferdinand, King of Bohemia and Hungary: "In this cause of faith, your dignity, and that of other princes, are also included, for it cannot be separated without also weakening your own affairs; which has been clearly seen in these places." (1) *De Regim. Princip.*, Book I, Chapter 10.

[*Latin ed. p. 13*]

ENCYCLICAL LETTER 13, which, with the same supreme providence and fortitude, follows in the footsteps of Our Predecessors, especially Clement XI, Benedict XIV, and Leo XI, who, as the pestilence of corrupt doctrines spread more widely in subsequent times, and the audacity of heretics increased, sought to block their access by the strength of their authority. We ourselves have repeatedly denounced the grave dangers that threaten [the Church], and have also indicated what is the best course of action to repel them. We have offered aid to princes and other rulers of states in the defense of religion, and we have urged the people to make use of the abundant benefits that the Holy Church provides. Now, we act so that these very benefits, which are the most powerful of all, may again be offered to princes, and we earnestly exhort them in the Lord to defend religion, and, which is also important for the state, to allow the Church to enjoy its freedom, without which it cannot be deprived without injustice and common detriment. The Church of Christ cannot be suspect to princes, nor unwelcome to the people. Indeed, princes ought to follow justice, and should not deviate from their duty in any matter; but at the same time, their authority is strengthened and aided in many ways. Those matters which concern civil affairs are recognized and declared to be within the power and supreme authority of princes; and in those matters in which judgment, although for a different reason, pertains to both the ecclesiastical and civil powers, there should exist harmony between the two, so that, by this benefit, harmful conflicts may be avoided. As for the people, the Church is born for the salvation of all men, and has always

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loved them as a mother. For it is she who, guided by pious charity, imparts gentleness to souls, humanity to morals, and equity to laws; and she has always detested the tyrannical domination that is inimical to honest freedom. This, as Saint Augustine has excellently expressed, is a custom inherent in the Church: "The Church probes the reins of men's minds, and makes all people subject to kings, showing how that not all things are for all, and how that charity is for all, and how that injustice is due to no one" (1). Therefore, your work, Venerable Brothers, will be very useful and clearly salutary, if you devote all your industry and resources, which are within your power by the grace of God, to helping us to alleviate the dangers or inconveniences that afflict human society. Take care and provide that those things which are prescribed by the Catholic Church concerning the matter of authority and the duty of obedience are clearly understood by the people.

(1) *De morib. Eccl. lib. 1, cap. 30.*

[*Latin ed. p. 14*]

14. Let those who diligently strive for a virtuous life make use of this Encyclical Letter. You, authors and teachers, are often urged to warn the people to avoid forbidden sects, to abhor conspiracies, and to engage in nothing seditious; and let them understand that those who obey those in authority for the sake of God, render to them a reasonable obedience, a generous obedience. For truly, God is He who gives salvation to kings, and He grants to the people to rest in the beauty of peace, and in the tabernacles of faith, and in a rich repose (2). It is necessary to pray and to implore, that the minds of all may be turned to honesty and truth, that wrath may be restrained, and that the long-desired peace and tranquility may be restored to the world. But that hope may be strengthened in obtaining these things, let us invoke Mary, the Virgin, great Mother of God, help of Christians, protector of the human race; and Joseph, her most chaste spouse, whose patronage the entire Church greatly trusts; and Peter and Paul, the princes of the Apostles, guardians and avengers of the Christian name. Meanwhile, granting the favor of divine blessings to you all, Venerable Brothers, to the clergy and to the people entrusted to your faith, we impart, in the Lord, our Apostolic Benediction with all our heart. Given in Rome, at St. Peter's, on the 29th day of June, in the year 1681, in the fourth year of Our Pontificate. LEO P. P. XIII.

(1) Psalm 143, 11

(2) Isaiah 32, 18.

[*Latin ed. p. 15*]

I5 EX 8. CONGREGATIONE CONCILI Pii RELICTI, die 29 Maii 1880. Compendium facti. Plus vir Simeon, anno 1861, postremo quo decessit, elogio, inier cetera disposuit: "Relinquo summam octocento florenorum, ut ex

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fructibus huius summae, celebrentur quotannis et in perpetuum duodecim anniversaria, in suffragium animae meae, uxoris filiorumque meorum, onerans de his anniversariis D. Lucam G. et post eius mortem, iuniorem Capituli sacerdotem." Post obitum testatoris, Rmus Episcopus supradictum pium relictum, ratum habuit, ad rem missio epistolio ad Capitulum Cathedralis dato die 1 Ianuarii 1862. E vivis sublato Canonico G., pium relictum, sede vacante, per decretum Vicarii Capitularis diei 29 Augusti 1873, collatum fuit Ioanni B., qui, licet natuminimus esset, novissime canonicatum obtinuerat, quique illud perpetuo retinuit. Vita functo Ioanne B.', per decretum Ordinarii de die 30 Iulii anni 1877, idem collatum fuit actuali possessori canonico Iosepho B., qui postremo loco inter canonicos connumeratus fuerat, licet omnium natu maior esset. Verumtamen cum de mense februario anni 1878 inter canonicos Cathedralis cooptatus fuisset D. Ioannes V., hic quatenus iunior Capituli canonicus a Rmo Ordinario petiit: "an ad se pertineret anniversariorum celebratio, atque usufructus relictae sortis." Ordinarius petenti respondit: "sese putare, legatum pium, de quo est sermo, naturam induisse."

[*Latin ed. p. 16*]

16. After the Ordinary's acceptance, the simple endowment remains valid; so that, according to the founder's will, once conferred, the invested individual shall possess the right to enjoy this endowment during his lifetime. Then, the advocate appealed to the Sacred Congregation, requesting a solution to the doubts written at the bottom. The discussion: The simple endowment is not undoubtedly what is meant, and it seems ambiguous. Furthermore, it does not seem possible to include the first pious endowment of Simeon among ecclesiastical benefices. Indeed, the most important endowments, those required for establishing [something], are listed in article 1, as can be seen in 1880, number 8. Regarding the first endowment, ecclesiastical [in nature], 2. It has, and is transmitted according to the following: 1. That something has been erected by the authority of a Bishop; 2. That it is attached to spiritual matters; 3. That it is conferred by an ecclesiastical person; 4. That it is conferred upon a cleric, having received the tonsure; that is to say, at least; 5. That it is perpetual; 6. That it cannot be retained by the recipient, but must necessarily be conferred upon another. Indeed, the first requirement is lacking in the pious endowment of Simeon, namely, that it was erected by the authority of a Bishop, for a title. Therefore, it seems that it is not a true ecclesiastical benefice, and it is superfluous to inquire about the other requirements, because a benefice cannot be, unless it has been canonically erected, as decided by the Rotam, 8, number 7, before Malvasia. This should be held more strongly, if one takes into account the Decree of the Bishop of January 4, 1862, in which it is stated that the pious testator left a sum of 800 florins as a legacy, and in which the faculty is granted for the acceptance of said

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legacy. Furthermore, in the instrument or act of foundation, neither the word nor the phrase "erection" of the pious endowment for a title occurs; on the contrary, the word "legacy" is used throughout, and the canonical [meaning] of the same.

[*Latin ed. p. 17*]

To the seventeen successors of the pious foundation, legates are to be granted in the name of the pious foundation. From this, it seems to follow that the pious foundation of Simeon should be considered among the legates of the pious foundation. However, the condition of Canonicus B. would be worse, if this pious foundation were to be considered a true benefice. For, since he already possesses a canonry in the Cathedral Church, and also a simple benefice in the diocese, and furthermore enjoys a perpetual legacy from Scotland, a third benefice would be incompatible, according to what is established by the Council of Trent, Session 24, chapter 17, concerning reform. Regarding the second doubt, it should be noted that, if the words "junior priest of the Chapter" are understood in a literal and natural sense, they seem to refer to a canon, at the very least, and not to a priest who is the last to be co-opted among the canons. Indeed, the testator did not say "the last canon of the Chapter," which words would signify a canon named last; but he honored the junior priest of the Chapter; and it is clear to everyone that this expression differs greatly from the former, and that the testator considered the age of the honored person. Since it is established that Canonicus V. is among those who are the most junior and the newest among the canons, it seems that the pious foundation should be granted to him. Nor does it seem that he should enjoy it perpetually, as is proposed in the third doubt, but only as long as he remains the junior among the canons, either in age or in the time of his appointment to the canonry; for if a new canon is appointed who is junior to him, the condition is fulfilled, as desired by the testator, for the attainment of the pious foundation, and it fails for him who previously held it, because he is no longer the junior among the canons. Regarding the fourth doubt, it seems that the place is for the repetition of the revenues of the pious foundation, in favor of Canonicus V. from the day on which he entered into possession of the canonry. Indeed, since Canonicus B. is not the junior, it is clearly evident that Priest V. is the junior among the canons, and therefore, from that day forward, he was manifestly placed in a position of bad faith, and therefore, the fruits of the pious foundation...

[*Latin ed. p. 18*]

18. Those who have been deprived of their rightful inheritance are obligated to seek its restitution; for it is certain that the fruits unjustly withheld by a bad-faith possessor must be returned from the very beginning, as stated in Justinian, *Institutes*, 1. Certum, 22. ff. concerning the recovery

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of property; also, *L* (Laws), 5. De petitione, *haereticorum editione*, the Sacred Roman Rota, before Crescentius, decision 23, number 4, and in *Romana seu Bergomen. Primogeniturae*, June 15, 1789, before Cesarei. Finally, the fifth question is answered affirmatively, provided that the Canon or Chapter is favorably disposed, while the matter remains within the jurisdiction of the Bishop regarding the fulfillment of the legacy. For when the testator stipulates: "I bequeath a sum of 800 florins, to be used for the benefit of the junior priest of the Chapter, it appears that the legacy pertains to the junior priest of the Chapter, and its administration belongs to him; for the legacy pertains to those to whom the words of the legacy apply," as stated in the Rota, decision 270, number 7, *contra Malvasia*; *Mans, consult.*, 25, number 12, *Caren. resolut., fovens.*, 45, number 4; the Rota, in a recent decision, 302, number 15, part 18, in *Romana pecuniaria*, March 12, 1759, § 3, *contra Elephantutio*. Furthermore, when the Bishop grants the Chapter the faculty of accepting the legacy, it seems to imply that the administration and disbursement of the same legacy belong to the Chapter itself. And the current Archbishop appears to have confirmed this, when in the year 1877, he ordered the Chapter to keep the sum of the legacy in the Chapter's treasury. Therefore, it seems that the administration and disbursement of the pious legacy are to be entrusted to the Bishop. IT APPEARS TO BE A SIMPLE BENEFICE.

However, another point must be considered: whether one examines the nature and purpose of the legacy, or the manner in which it is conferred, and the persons to whom and by whom it is conferred, it seems impossible to doubt that the pious legacy of Simeon should be included among the Ecclesiastical Benefices or Capellanias. Indeed, since the testator bequeathed 800 florins for the purpose of celebrating twelve anniversaries annually, perpetually, it seems that he founded an ecclesiastical Capellania, for which a decree of erection from the Ordinary would be necessary; because Capellanias are erected when sufficient funds are assigned to support them.

[*Latin ed. p. 19*]

PIUS RELICT 19 days. C. C. in Savonen. August 4, 1725. What is to be more firmly held, if it is kept before one's eyes, is that the aforementioned anniversaries were to be celebrated "by the younger Priest of the Chapter," those words seeming to require the presbyteral order in the Chaplain, and therefore nothing is more in accordance with the will of the testator than that the ecclesiastical endowment be called a "Chaplaincy," as is observed in Firmana Capell. August 29, 1722 §. 7, and which in all things is equated to an ecclesiastical benefice, as in Viterbien. Capell. June 10, 1876 §. Position. Therefore, it seems to be concluded that the pious endowment, of which we are speaking, should be called an ecclesiastical benefice or an ecclesiastical Chaplaincy. This Chaplaincy, indeed, seems to be to be conferred upon the

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canonically appointed, even if he is not the youngest. For we hold with one voice that this was the intention of the founder, the Bishop and the Canons of the Cathedral Church. Indeed, it is clear to all that such a testimony is of great importance, and that faith should be added to it; for the testimonies of those who are in authority in matters of science, familiarity or custom with the testator, ought to be held as more weighty, if they agree with the letter of the testament and the will of the testator, as decided in Rotam, 146, n. 15, before Malvasia; Gabriel, concl. 3, n. 3, Menoch. de coniect. ult. volunt. Hh. 5, n. 15, and Rot. in rec. decis. 260, n. 13, part. 9, before Canili, dec. 260, n. 3. This interpretation, in fact, is confirmed by the will of the testator; for the pious endowment, from times past, has always been conferred upon the Canon, the younger, or the last appointed. From this, it is to be concluded that it pertains to the will of the founder, and not to the youngest. But he who once obtains it, seems to be entitled to enjoy it for as long as he lives, as is proposed in the third doubt, and consequently, the Canon B. is not to be compelled to relinquish it by the favor of the Canon V. It seems that this was the intention of the testator, as can be seen from the fact that he expressly stipulated that the Canon—

[*Latin ed. p. 20*]

20. The *pius relicto* [a form of provision for the support of a minor] benefits the designated person until the end of their life; and furthermore, the canon B., who obtained the *pius relicto* after the first, retained it until his death. Indeed, nothing can be presented as more reliable for interpreting the will of the testator than the custom of those who preceded, as stated in the decrees of the Sacred Roman Rota, in the recent decree 254, number 6, part 15, and in the most recent decree 28, number 4, volume 6, before Ansaldo; in the decree 706, number 8, and in the decree of the Congregation for Extraordinary Affairs of July 5, 1772, paragraph final, before Origo, and in the decree 129, number 7, before Malvasia. Therefore, it spontaneously and clearly follows that the canon V. is in no way deprived of the right to recover the fruits [of the *pius relicto*]. Granted, although it is not conceded, that he should possess the *pius relicto* as long as the minor perseveres, the actor's argument in this matter is not superior. Indeed, it appears that there is no place for the repetition of the fruits of the *pius relicto* in favor of Canon V. except from May 27, 1879, when, through an appeal by the same Canon to the Sacred Congregation, the right of Canon B. was called into question, and in that, good faith ceased. Certainly, it is not unknown that the fruits from that day must be restored, as stated in the decree of the Sacred Roman Rota, 132, number 2, before Malvasia, and in the decree of the fideicommissi of Asculana, June 2, 1777, paragraph 11, before Muto, and in the decree of the Congregation for Extraordinary Affairs of Firmana, regarding the fruits, July 4, 1791, paragraph 2, before the same Malvasia. From the foregoing, it seems to flow spontaneously

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that the right of collation [bestowal of a benefice] in the matter pertains to the Bishop; for, through the sacred canons, the Bishop is the ordinary bestower of benefices in his diocese, whether it concerns benefices free from collation or benefices subject to patronage. Moreover, after the collation has been made, the administration [of the benefice] follows as a consequence, in whose favor the collation was made. Furthermore, in order to obtain the administration in the matter, the Chapter may obtain assistance from the fact that the portion of the *pius relicto* has been deposited in the Chapter's treasury; for this was done as a precaution, and to ensure that it was kept more safely, as the Bishop testifies in his information. From this, it seems to be concluded that the right of collation...

[*Latin ed. p. 21*]

PIUS RELICTI 21 were addressed to the Bishop, and the administration thereof was to be held by the Canon. After both matters had been considered, the Most Reverend and Most Reverend Fathers, with their wisdom and expertise in law, deliberated as to how the doubts should be resolved.

I. Whether the pious bequest of Simeon should be considered an ecclesiastical benefice, or rather, a pious endowment, in this case.

II. Whether the same bequest should be conferred upon a Canon of the lowest rank, or rather, the last one named, in this case.

III. Whether he who once received it, should perpetually, or rather, as long as he remains the junior, enjoy the same, in this case.

And, with the first part being answered negatively, and the second part affirmatively:

IV. From what time onward is there a place for the repetition of revenues from the pious bequest in favor of the Canon, in this case.

V. To whom does the administration of the bequest itself and the right of collation belong, in this case.

RESOLUTION. The Holy Council, having considered the matter, decided on May 29, 1880, to respond as follows:

To I. Negatively to the first part, affirmatively to the second.

To II. Negatively to the first part, affirmatively to the second.

To III. Affirmatively to the first part, negatively to the second.

To IV. Provision is made in the preceding.

To V. The right of conferring belongs to the Bishop, the administration belongs to the Canon legatee, but the custody of the titles of the public revenue remains with the chapter in Fermo, and the treasury is located in the chapter house in Gafsa.

FROM WHICH IT MAY BE GATHERED: I. In many respects, ecclesiastical benefices differ from those granted by pious endowments and from

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those held by lay chaplains.

[*Latin ed. p. 22*]

22. The substantial difference between ecclesiastical benefices and other pious bequests lies principally in this: that in the founding of ecclesiastical benefices and chaplaincies, a decree of erection and a canonical institution are entirely required; which are not required for pious legacies or lay chaplaincies.

23. Lay chaplaincies and pious legacies differ little; hence, they are often considered as pious legacies.

24. A pious bequest must be endowed with a specific sum of money; which cannot be obtained from the will of the testator, unless it is by a canon, to whom it must be conferred by the Bishop, who, by law, is the ordinary bestower of benefices in his diocese.

25. Ecclesiastical benefices and pious legacies are presumed to be perpetual, unless the contrary is clearly demonstrated from the will of the testators, or because the Supreme Pontiff has removed the perpetuity, and instead established manual labor.

26. Therefore, a pious legacy endowed with a specific sum of money, once received by a canon, can be retained by him, and does not pass to another, even during his lifetime.

DISPENSATION FROM IRREGULARITY. May 29, 1880. Through summary petitions, a summary of the facts is presented. The Bishop of U. commended to the Most Holy Prince a certain Salvator, who earnestly desired to dedicate himself to the ecclesiastical militia, and requested a dispensation from irregularity due to a physical defect. Furthermore, the Bishop states that the defect consists in the fact that, due to a poorly set bone, the left arm cannot be bent at the elbow, but remains extended. Consequently:

[*Latin ed. p. 23*]

DISPENSATION FROM IRREGULARITIES 23 « 1. That the alb, for greater convenience, should be put on beginning with the same left arm; « 2. That the hands should not be held raised above the chest, but whether joined or not, should hold the injured arm, conforming it to the healthy one, so that they may not be discordant, but rather, extended in nearly straight, parallel lines to the *planum*; « 3. That when kissing the altar, the same arm should be extended towards the posterior part of the altar, so that no incongruous contortion of the body may occur; « 4. That when receiving the holy Host, he should place the paten nearly adhering to the body, and in the same manner, should hold the purificator for the communion of the chalice; « 5. Finally, that when giving the blessing to the people, he should hold the injured arm extended, adhering to his side, so that it may not be forced to be led in an inconvenient manner through the oblique course of the right groin. « When neither the arm, nor the hands, nor the fingers are

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affected by any defect, or when even the most slight impediment prevents them from performing their actions and movements, all that pertains to the elevation of the Sacrament, the breaking of the holy Host, and the purification of the vessels, is performed properly. Furthermore, in all that has been noted, nothing seems to occur that is so indecent as to provoke laughter from those present, or to offend piety. »

GRACE SEEMS TO BE DENIED. All who are deformed in body are to be kept away from the sacred orders, lest they cause scandal, or at least the admiration of the people, in the sacred service, as is stated in Canon Illiteratos aut aliqua corporis parte vitiatos vel imminutos, nullus praesumat ad clericatus ordines promovere. To this the chapter Presbyterum de Cleric. aegrot. adds, in which Pope Eugene does not permit a priest to celebrate Mass because, as the Pontiff says, "neither securely, because of weakness, nor without scandal, because of deformity."

[*Latin ed. p. 24*]

24. We are confident that a dispensation from the irregularity of a member can be granted in this case. Indeed, this is established in title XIX, book I, of the Decrees, concerning the validity of ordinations, namely, whether or not they are valid. Therefore, if it is the case that the defect with which the aforementioned person struggles is such that he cannot celebrate Mass either securely due to his weakness, or without scandal, or at least without the admiration of the people, then it follows, as a matter of course, that he cannot be admitted to the ecclesiastical state and to the reception of orders. Moreover, when it comes to promoting someone, rather than promoting him to the sacred orders, there is a reason why this cleric should be more easily rejected from the sacred ministry, as can be gleaned from the treasury of resolutions of the Holy Congregation. A dispensation *seems* to be warranted. However, on the other hand, it should be noted that the aforementioned rigidity of the arm is not such as to induce an irregularity due to a bodily defect, as is stated in Canon Mit. dist. 26, and in Cap. Presbyterum concerning sick clerics, or in Cap. 1 and 6 concerning the validity of ordinations, namely, whether or not they are valid. Indeed, from the history of the facts that we mentioned above, we know that the defect with which Salvator V. struggles does not impede the observance of the sacred rubrics that are prescribed for the celebration of the sacred liturgy, nor does it cause scandal or the admiration of the people attending the sacrifice of the Mass. However, even if we admit the hypothesis that the case involves a bodily defect that induces an irregularity, there are several reasons that suggest granting a dispensation from such an irregularity. First and foremost, there is the Bishop's vote. But how much weight should be given to the Bishop's vote? It follows that the Supreme Pontiff usually entrusts the entire matter to the judgment of the Bishop, as Reiffenst. states in title 20, no. 37, concerning the validity of ordinations, namely, whether or not they

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are valid, citing Rebuffum in *Praxi Beneficiorum*, § on dispensations with bodily defects, no. 7: "The Pope does not usually dispense directly with bodily defects; but rather, he writes to the local ordinary, so that if, after an ocular inspection, he knows that there is not such a deformity that it could give rise to scandal among the people, nor any impediment from the Canons, he himself may dispense."

[*Latin ed. p. 25*]

I. DISPENSATION FROM IRREGULARITY 25. In the second place, there is the outstanding talent of the Savior, and his expertise in educating young people, along with a proven disposition of mind suitable for the clerical life, and his virtuous character; and, above all, the grave judgment of the Bishop regarding the pressing necessity of priests in his diocese. Given these circumstances, it is understood how the requests of the cleric, Salvator, should be considered. RESOLUTION. The Sacred Congregation responded on May 29, 1880: At the discretion and conscience of the Bishop, having been informed verbally with the Most Reverend Erection of the Hospital on June 26 and July 24, 1880. SUMMARY OF THE FACTS. Canon Antonius Maestri, in his last will and testament, left, as a legacy, 4,000 scudi and a small house, with the intention that a hospital be built to assist those suffering from infirmity. However, it was seen that this legacy was not sufficient to undertake such a commendable work, so the executors of the pious will, with the best of intentions, decided that the principal should be increased by the addition of interest. Furthermore, after some years, through the pious generosity of Octavius Mazzoni Maestri, another sum was added for the same purpose; and so much money is now available that it is estimated to be sufficient for the project. However, the house bequeathed as a legacy is, according to the judgment of experts, not suitable; and it cannot be built elsewhere, nor can a hospital be erected except in the Church of the Most Holy Virgin of Peace, which is located outside of Oppido, because of the narrowness of the space and the unhealthy air. The architect to whom

[*Latin ed. p. 26*]

26. Concerning the construction of the hospital, it was determined that a plan of the building to be erected should be drawn up. After careful consideration of all matters, it was decided that the hospital would occupy the rear portion of the church, along with a small adjacent square, including the sacristy and two altars. The remaining front portion of the church would be completely restored for worship. Since this church belongs to the Collegiate Chapter, a matter arose regarding compensation to be provided, and a sum of one thousand livres was allocated to a skilled craftsman to address this issue. This sum was to be paid to the Collegiate Church, to which the preservation of the aforementioned church also pertains. Regarding

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this matter, a petition was presented, requesting that the Holy See permit the occupation of the aforementioned portion of the church, upon payment of the one thousand livres, for the construction of the hospital. The Bishop, upon being consulted, issued a favorable opinion; he proposed that the one thousand livres be used for the restoration of the Collegiate Church, rather than being invested.

WHAT IS OPPOSED TO THE PETITION. The Fathers of Trent strongly emphasized the importance of preserving and restoring churches, as can be seen in chapter 7 of session 21 concerning reforms; and this Holy Congregation has often opposed the demolition of churches for this reason, as in Ravenna on July 29, 1775, and in Iesi on August 26, 1780. However, if such permission has ever been granted, it has been due to serious reasons, and especially due to the risk of irreverence and profanation to which a particular church might be exposed, which is not the case here. But a greater concern arises, since the matter involves the alienation of the church. Everyone knows, and even those who know nothing, that churches, being sacred things dedicated to God, are outside of human commerce, and therefore their alienation is prohibited by both natural law. *L. si in emptione 34 §. Omnium ff. De contr. empt., L. 2 et 9*.

[*Latin ed. p. 27*]

ERECTIONIS HOSPITALIS 27 Cod. De religiosis et sumpt. f nn., Can. Si quis obiecerit 1 q. 3 et Cap. Querelam 14 De Simon. Whether assistance should be sought in converting a church into a hospital, and whether necessity justifies such a conversion due to the lack of another more suitable location. It is difficult to believe this. For it is not a matter of an island surrounded on all sides by houses, but of a small town, whose boundaries can be expanded. Furthermore, it should be noted that this concerns a matter set apart for God, and therefore it cannot be converted to any use, even a pious one, as Saint Thomas teaches, as Cardinal Capisuccus states in Controv. II. De vot. sol. quaest, un. §. 2 vers. Contra haec - ibi - "Saint Thomas, when he says that divine things are not to be converted to human use," speaks of the most general of human uses; and he has not made any distinction, so that it may be understood that he is speaking of human use not only profane, to which it is certain that divine things cannot be converted, but also pious, which is also a human use, hence the Doctor uses that word, "human use," without any limitation, so as to include every human use.

THESE POINTS FAVOR THE APPEAL. On the contrary, consider that it is not new for a church, which is rightly called the true mother of the poor, to use its own goods, indeed its sacred vessels such as chalices and more precious objects, to carry out works of piety, for example, to redeem captives, to alleviate the poverty of the needy, and to provide charity, as is stated in Can. Aurum 12 quaest. 2. Among these works of piety, hospitals

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have always been held in the highest regard, since they are enduring and continuous works of charity; and therefore it is not surprising that in our case the Church contributes to the construction of that hospital, even by ceding a part of the Church of Peace, which would be nothing other than granting a sacred thing for a use that is equally pious. Furthermore, this concession offers all benefit and no detriment, for since the Church of Peace, in which few sacred rites are performed, requires considerable expenses for its restoration each year, it could easily happen that, with the passage of time, and with a lack of funds, it would be reduced to a more deplorable state, and perhaps it would be necessary...

[*Latin ed. p. 28*]

28. To close the hospital because of its indecency: it seems better to have a small church, but one that is adorned, than a large one that is repulsive with squalor and filth. Nor can the difficulty arise from the admiration of the people, from scandal, or from the sale of property. For the Bishop testifies that the admiration and scandal arising from the construction of a hospital, greatly desired by the people, are far from being the case. However, the sale of property cannot be so thoroughly condemned that it can never be permitted. There are precedents that suggest the contrary. Thus, in the Spoletana Chapel, on September 9, 1730, in question 1, confirmed on November 17, 1731, and February 12, 1735, the Seminary stated that it possessed two churches on the Lateran Palace grounds, and also some property located in the *Vallis*, and therefore it petitioned for permission to sell them appropriately, and obtained it. The nuns of the Monastery of *Vallis* Viridis, having been displaced by an earthquake, moved to the old castle, and there they built a new monastery. In order to complete the closure of the monastery, they requested that a small and low church, located near the monastery, be demolished, that the price of the church to be demolished be paid by the patrons, or that another be rebuilt in a location suitable to them. The requests of the nuns were granted, but the execution of the matter was deferred to the judgment of the Cardinal Prefect: *Hieracen. Exempt. 6 Dec. 1760, dub. 2*. Moreover, there are no lacking examples in this very venerable City, where permission has been granted to demolish churches and convert them to profane uses, as happened almost thirty years ago with the church of Saint Stephen, which faced the church of Saint Lucy, commonly called *del Gonfalone*, in which a house was built; and also with another church of Saint Mary, called *ad Spolia Christi*, in which a house was likewise built almost twenty years ago. Therefore, having briefly considered both cases, the following question was put to the judgment of the E.E.P.P.: Whether, in such cases, and in what manner, one should grant

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the requests of the petitioner.

[*Latin ed. p. 29*]

RESOLUTION CONCERNING THE ERECTION OF A HOSPITAL. The Sacred Congregation, having considered the matter on July 24, 1880, decided to respond as follows: Affirmative, according to the vote of the Bishop, having received the proposal with satisfaction. FROM WHICH THE FOLLOWING MAY BE GATHERED: I. The Church is rightly called the mother of the poor, since it often sells sacred and valuable objects in order to carry out works of piety, such as redeeming captives, and alleviating the poverty and misfortune of the needy. II. The Church possesses gold, not to hoard it, but to expend it and to assist in times of need. What use is it to keep what is of no benefit? Surely the Lord would say: "Why did you allow so many poor people to die of hunger? And you had gold, from which you could have provided sustenance." (Can. Aurum 12, quaest. 2). III. Therefore, it is not surprising that the Apostolic See, as part of the Church, should agree to cede, at a moderate price, property for the construction of a hospital, in which works of charity are continuously carried out for the poor and the sick.

FROM THE SACRED CONGREGATION OF BISHOPS AND REGULAR CANONS REGARDING THE REDUCTION OF A PENSION. On June 28, 1878, and December 17, 1880. A SUMMARY OF THE FACTS. The Archbishop of the Diocese of O., Anthony, informed the Holy See in March 1876, recalling the decree of the blessed Pope Pius VI, issued on March 9, 1803, which imposed upon his See the obligation to pay an annual pension of 4,800 livres. This burden could be fulfilled.

[*Latin ed. p. 30*]

30. The reduction of the pension can, without serious inconvenience, be made, considering that at the time when the Archdiocesan Fund of the Order possessed a revenue of one hundred thousand livres annually, "but at the present time, after the usurpations of the Church's goods," it does not receive more than ten thousand eight hundred livres, which is the annual revenue assigned from the public treasury, and that, too, with the burden of certain debts (taxes imposed by the Government). Therefore, the Archbishop, the Orator, asks (and thus he continued his arguments) whether he is obligated to pay that pension, or any part of it, to the Episcopal Fund B., or whether he can be absolved from this obligation, given the extraordinary changes in circumstances, so that he may consider himself absolved. This is entirely necessary, both so that the Fund B., if it still exists by right, is not unjustly defrauded, and so that, in the contrary case, an indefinite burden is not imprudently imposed on the Fund for the future.

Since the Bishop of B. opposed, and demonstrated that the pension should be maintained, the matter was referred for discussion before the

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full Congregation.

ARGUMENTS OF THE ARCHBISHOP OF O.

The Archbishop Anthony S. presented to the records the reasons for the income and expenses of his Fund, showing: that the income, burdened by expenses, amounts to 21,361 livres; expenses, after being deducted, amount to 7,080 livres and 98 sols, leaving a balance of 14,280 livres and 67 sols. On the other hand, at the time when the pension was imposed, the revenue usually fluctuated between 100,000 and 120,000 livres. He stated that this enormous difference was due to the abolition of tithes, and that, consequently, with the cessation of the collection of tithes, the pension also should have ceased. He affirmed that this had indeed been the case, for fifteen years ago, Bishop B. had not demanded anything of this kind.

OBJECTIONS OF THE BISHOP OF B.

Above all, he pointed out that this was not a case of a true pension, imposed as a lucrative title, but...

[*Latin ed. p. 31*]

In response to the claim regarding the reduction of the pension, established under a burdensome title, for the endowment in compensation for the funds of the rural parishes, which were withdrawn from the Table of Saint Benedict (Mensa B.) and assigned to the Archiepiscopal Table of O (Sedi O), by the Most Holy Pope Pius VII on March 9, 1803: through an Apostolic Bull which reads as follows: "For the endowment of the Table of Saint Benedict, a yearly pension, free from all and any burden, immune, and exempt for all future times, consisting of one thousand eight hundred and fifty gold coins, derived from the fruits, revenues, and proceeds of the Archiepiscopal Table of O, we reserve, and from this time forward, we name the currently existing Bishop of B and his Archiepiscopal Table as [beneficiaries]."

This sum was paid until the year 1852. Secondly, the Archiepiscopal Table of O claimed to receive 18,000 annual gold coins, while the Table of Saint Benedict received only 1,436 gold coins and 16. Furthermore, they argued that they could not deduct expenses for the Lenten sermons, nor any other similar expenses, from the amount owed to the Table of Saint Benedict. They asserted that they could not, in any way, have ceased paying the pension due to the abolition of tithes, since they paid other pensions without any exception. Moreover, they argued that the abolition of tithes could not be applied to them for another reason: because the Bull of Pius VII imposed the endowment on the Table of St. Benedict based on the revenues in general of the Archiepiscopal Table, and not on any specific or

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designated revenue. They added that the pension had not been collected since the year 1852, because the Table of Saint Benedict was vacant, and in the year 1860, the Archiepiscopal Table of O had taken all the assets of both Tables. The Archbishop, Anthony S., was to blame for the fact that taxes were imposed on the Table without deducting the pension in question, which he had failed to disclose. Finally, since the Bull of Pius VII declared that the Table of Saint Benedict was to receive "a yearly pension, free from all and any burden, for all future times," all taxes must be paid by the Archiepiscopal Table of O. However, they stated that they were willing to agree to a reduction of the pension.

[*Latin ed. p. 32*]

Regarding the reduction of the pension, considering the matter of taxes, to the amount of 3,000, from June 18, 1874, which the Archbishop began to receive: indeed, concerning the time that has passed, he declared himself prepared to offer some concession. He promised to maintain all of this, provided that a prompt payment of the pension were made, so that the Government would not again demand the pension taxes.

OBSERVATIONS FROM THE OFFICE. The Consultor stated that it must be diligently investigated whether a true pension, or rather, a grant, actually existed in this case: for this depends on the application of the decree *Cum Nuperrimis*. He seemed inclined to consider that the nature of the pension excludes perpetuity: for the pension is defined by Gigante as *dépens. 1 n.*, a certain part of the revenues, for a time, and not perpetually. From the perspective of perpetuity, the Canonists distinguish between a benefice and a pension, as Fagnan states in chapter concerning rescripts, number 98: an ecclesiastical benefice, by its very nature, must be perpetual, whereas a pension is not perpetual, but temporal. However, those words of the decree *Cum Nuperrimis* which state: "without any distinction being made between benefices and pensions," must not be overlooked. Perhaps, with respect to this, some reduction might be admitted. Moreover, the Congregation indicated in *Romana* or *Firmana* a reduction of the pension on April 5, 1878. A reduction could more readily be granted in this case, if, because of the prompt payment made, no pension tax is paid.

After these discussions, the Fathers proposed to resolve the 7th doubt: whether, how, from what date, and to what amount, the decree *Cum Nuperrimis* should be applied to the episcopal mensal pension in this case. And at the general meeting of June 20, 1878, a response was given:

[*Latin ed. p. 33*]

REDUCTION OF THE PENSION: 33. With this in mind: the sum is to be calculated as the amount determined by the Regulations of the Order concerning its own revenues, through the payment of bonds of 3000, deducting expenses, and with the understanding that the Bishop B. retains

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the freedom to remit any portion of the pension that has not been paid in advance.

PROCEEDINGS: Two years after this resolution, the new Archbishop O., Bonfilius M., who succeeded the deceased Anthony S., appealed to the Holy See. He argued that the resolution of June 28, 1878, issued against the late Archbishop Anthony S., was, as if by a restoration to the original state, and he requested a revision of the issued decision. He stated that the "pension" granted to Bishop B. in bonds of 3000 was so burdensome that it prevented the titular Archbishop from being able to provide for his own needs, nor to satisfy the expenses of his officials and family, to bear the burdens of the See, to meet the needs of the poor, to provide for the maintenance of the Seminary, and to cover many other unavoidable expenses.

Upon the prayers of the Holy See and the King being sent by the Pope, the moderators of the same Sacred Congregation were ordered to re-examine the case: and, without delay, they wrote on August 12, 1880: "Let the matter be presented in the plenary session of the Holy Order, to the parties notified, without delaying the payment of the bonds of 3000, according to the resolution of the Sacred Congregation of June 28, 1878."

NEW DEDUCTIONS BY THE NEW ARCHBISHOP: He recalled the circumstances under which Pope Pius VII established a pension of 4800 for the See of B., in order to demonstrate that the entire burden had been imposed on the Archbishop of O. at that time, and that this was the true pension in question. Indeed, the word "pension" as it appears in the Pontifical Bull cannot signify something different from a pension, as is the case, and not a dowry. Furthermore, considering the context of the Bull, it is expressed therein: "And if, moreover, the recently expressed revenues, which are to be explained more clearly below, do not seem sufficient for the endowment of the Episcopal See of B." – Acta, Vol. XIV, p. CLVII.

[*Latin ed. p. 34*]

34. REDUCTION OF THE PENSION: "annual payment, etc." However, this does not involve a grant, but rather a supplement to an existing endowment, granted by the favor of Bishop B. with Pontifical approval, which does not destroy the essence of the pension. Having stated these premises, two legal questions were raised. 1. Whether the obligation to pay the pension still exists. 2. To the extent that the first question is affirmative, whether a reduction of the pension is permissible according to the decree *Cum nuperrimis*. Regarding the first question, arguing that the condition of the O. estate has been completely altered, since neither the tithes nor the stable properties, nor any other asset that constituted the pension at the time, now exists, he maintained that the pension has vanished, lacking its foundation. It was argued that it is not the case that the revenue to be paid to the government treasury takes the place of stable properties or

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movable assets. Rather, this is merely a personal obligation, dependent on the government's discretion, and entirely different in nature from an endowment, and the two must never be confused. Regarding the second question, he again demonstrated the true nature of the pension, insisting forcefully on its reduction, or even its extinction. For since the pension is a certain part of the fruits of some benefit, it should follow the fate of that benefit. The O. estate possessed 100,000 *nuevos* at one time; at present, it has barely 13,712:38 *nuevos*, that is, barely one-sixth of the former income. In the same proportion, the instituted pension should be reduced: of 4,800 *nuevos*, barely 4,152:20 are owed to Bishop B. After deducting the thirty *nuevos* tax for each centenario, 2,932:26 *nuevos* remain. Furthermore, the B. estate had become quite wealthy since 1803, having, in place of six towns assigned to the Diocese of A., six of the most flourishing towns taken from the Diocese of O.; to these, a pension was added only for abundance. However, it is true that at present, the revenue from the public treasury is only 7,432 *nuevos* for Bishop B.; but he has other resources from which he amply supplements the deficiency.

BISHOP B.'S RESPONSES. From the words of the Bullae, and from the very...

[*Latin ed. p. 35*]

REDUCTIONIS PENSIONIS 35 adversis argumentationibus (ita ipse) planum fit pensionem in dotationis supplementum concessam fuisse Mensae B. in perpetuum. Quoties vero pensio perpetua est, concidit cum censu, et non videtur differre a censu novo, ut canonistae ac praecipue Card. Be Luca et Pikier unanimes tradunt. Nec verum est anno 1803 locupletiores factam fuisse Mensae B. conditionem, nam loco sex oppidorum quorum populus animarum 11,168 constabat, sex oppida recepit animarum numero 4860. Cum vero ex hac mutatione Mensae dotatio detrimentum persentiret, aequum fuit, pensione perpetua eius damno providere. Ergo pensio, tum causa inspecta ob quam concessa est, tum eius perpetuitate, verae dotationis indolem sumpsit, nullo modo cum pensione, qua tali, confundendam. Haec non ad mei ipsius commodum, sed ut Mensae mihi traditae iura tecta sint. Transeunt Episcopi, mensa autem manet: quae nisi pensionem exigeret, nec congruam attingeret (1). Etenim dum Archiepiscopus O. 18,000 libellas ex traditis sibi publici reditus titulis exigit, Episcopus B. libellas tantum 743 ex iisdem titulis habet. Cetera incerta omnino sunt, et a Gubernii Moderatorum voluntate omnino dependentia. Monstruosa est proportio ex adverso instituta pro pensionis diminutione adstruenda. Ponit enim antiquum reditum in libellis 100,000, nulla onerum (quae gravia erant) habita ratione: novum reditum, oneribus cuiusque generis subductis, indicat. Ex libellis 418,20 tributum triginta libellarum pro unoquoque centenario, iam detractum cum suum reditum minimum cohibuit, iterum subducit, cum manifesta invocatae proportionis laesione et computationis errore. Quo su-

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per capite satis iam largitum est, cum loco libellarum 4800, tantum 3000 Mensae B. de bono et aequo adsignatae sunt. His aliisque amplissime disputatis propositum est (1) Confer deductiones quae prostant in Vol. VII, pag. 327.

REDUCTION OF THE PENSION 35, despite the objections (as he himself states), demonstrates that the pension was granted as a supplement to the endowment of the Mensa B. in perpetuity. Whenever a pension is perpetual, it is equivalent to a census, and it does not seem to differ from a new census, as canonists unanimously state, especially Cardinals Be Luca and Pikier. Nor is it true that the condition of the Mensa B. became more prosperous in the year 1803, for instead of six towns whose population consisted of 11,168 souls, it received six towns with a population of 4860 souls. Since, due to this change, the endowment of the Mensa suffered a loss, it was fitting to provide for this loss with a perpetual pension. Therefore, the pension, both because of the reason for which it was granted and because of its perpetuity, took on the character of a true endowment, and should not be confused with a pension in any way. This is not for my own benefit, but so that the rights of the Mensa entrusted to me are protected. Bishops pass away, but the Mensa remains: which, if it did not require a pension, would not reach a proper level (1). Indeed, while the Archbishop O. demands 18,000 leases from the public revenue titles granted to him, the Bishop B. has leases for only 743 from the same titles. The rest are entirely uncertain, and entirely dependent on the will of the Government Administrators. The proportion established in reverse to support the reduction of the pension is monstrous. It places the old revenue in the leases at 100,000, without taking into account any of the burdens (which were heavy): the new revenue, after deducting all kinds of burdens, is indicated. From the leases of 418,20, a tax of thirty leases for each centennial, already deducted, has restricted the minimum revenue, and then it deducts again, with a manifest violation of the invoked proportion and an error in calculation. Enough has already been said on this subject, since instead of 4800 leases, only 3000 were fairly assigned to the Mensa B. These and other extensively debated points are the purpose (1) See the deductions that appear in Vol. VII, page 327.

[*Latin ed. p. 36*]

REDUCTION OF THE PENSION 36. Concerning whether and how to retract from the resolution issued in the general assembly on June 28, 1878, in this case. And in the general congregation held on December 17, 1880, the Most Reverend Fathers gave the following response: "In the decisions and further." FROM ALL OF THESE, YOU MAY GATHER: I. That a perpetual pension, which is granted as a supplement to the endowment of a benefice or prebend, constitutes a movable capital belonging to the benefice, and does not differ from the true rent. II. That, according to the decree *Cum nuperrimis*, a proportional reduction of pensions should be instituted after

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a suitable conciliar deliberation. III. That, under concurrent circumstances, as in this case, it has been deemed equitable, considering that almost all of the taxes pertaining to the pension itself have been borne by the pensioner, due to the reduction of the pensioner's income. IV. That, for grave reasons, especially when grievances are presented by persons of prominence in the ecclesiastical hierarchy, a revision of a supreme decision, through a restoration to the previous state, may sometimes be granted. V. That this is done because equity is the supreme law in the judgments of the Church, so that the affairs of each person, and especially justice, may not suffer due to a lack of thorough investigation.

[*Latin ed. p. 37*]

37. FROM THE DECREE OF THE HOLY CONGREGATION OF THE INDEX, dated the second day of June, in the year 1881: "The Most Eminent and Reverend Cardinals of the Holy Roman Church, assembled in the Congregation, by order of the Most Holy Pope Leo XIII and the Holy Apostolic See, concerning the Index of books of pernicious doctrine, and their condemnation, proscription, expurgation, and permission throughout the Christian Republic, having met in the Apostolic Palace at the Vatican on the 20th and 27th of June, 1881, condemned and condemns, proscribes and proscribes, or orders that the following works be referred to the Index of prohibited books:

* *Opera Sac. C. M. CURCI. La Nuova Italia e i Vecchi Zelanti. Studii utili ancora all'ordinamento dei partiti parlamentari. Firenze, Fratelli Bencini editori, 1881.* Decree of the Sacred Office, fourth day of June, 1881. The author commendably submitted and disapproved of the work.

* *BURWOUF EMILE. Le Catholicisme contemporain. Paris, Calman Lévy éditeur, 1879.* Decree of the 14th of February, 1881. The author (Placido Casangian, etc.) of the work entitled: *Risposta finale degli Orientali agli Occidentali*, is prohibited. Decree of the Sacred Office, 12th of March, 1873; the author commendably submitted and disapproved of the work.

* *Feria II die 21 Iunii 1881 BURNOUF EMILE. La science des Religions. Paris, Maisonneuve e C, 1876.*

* *RENAN ERNEST, member of the Institute. L'Antéchrist. Paris, Michel Lévy frères éditeurs, 1873. — L'Eglise Chrétienne. Paris, Calman Lévy éditeur, 1879.*

* *JACOLLIOT LOUIS. Les Fils de Dieu. Paris, 1875. — Le Pariah dans l'humanité. 1876. — Genèse de l'humanité, Fétichisme, Polithéisme, Monothéisme. Paris, 1876. — Histoire des Vierges. 1879.*"

[*Latin ed. p. 38*]

38. DECRETUM GREGORIANUM FERDINANDI. The tombs of the Popes. First Italian translation, revised and enlarged by the author. One

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volume. Rome, "Fratelli Bocca e Comp." publishers, 1879. — Urban VIII and his opposition to Spain and the Emperor. An episode of the Thirty Years' War. One volume. Rome, Fratelli Bocca, etc., 1879. CASALE MONFERRATO, BERNARDO, Advocate. A reading book for the Italian people. Saluzzo, Lobetti-Bodoni brothers' printing house, 1880. MARSELLI, NICCOLA. The origins of Humanity. Turin and Rome, Ermanno Loescher, 1879. — The great races of Humanity. Turin, etc., 1880. The author (Migorel, curate of Maletable), of the work entitled: "The Week, or the 3rd Commandment of God," with a manuscript preface and a red cloth medal bearing the words "God wills it, and Our Lady of La Salette," having commendably submitted the work and disapproved of it. Therefore, no one, of whatever rank or condition, may dare to publish, or, having published, to read or retain the aforementioned work, in any place, or in any language, but must deliver it to the Ordinaries of the places, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These matters, having been related to the Most Holy Lord, our Pope Leo XIII, by me, the undersigned, S.I.C. from the Secret Archives, His Holiness will approve the Decree and has ordered it to be promulgated. In witness whereof, etc. Given in Rome on the 20th of June and the 16th of July, 1881. F. R. THOMASM, Cardinal MARTINELLI, Prefect. Fr. JERONIMUS PIUS SACCHETTI, Order of Preachers, Sacred Congregation of the Secret Archives. Place for the Seal. On the 21st of June and the 16th of July, 1881, I, the undersigned, witness, testify that the aforementioned Decrees were affixed and published in the City. Vincentius Benaglia, Apostolic Censor.

[*Latin ed. p. 39*]

39. FROM THE VICARIATE OFFICES: Letters. The Most Eminent Cardinal Vicar, by mandate of the Most Holy Pope Leo XIII, issued instructions to the Bishops concerning the sacrilegious commerce of false relics. Most Reverend Lord, it is now the twentieth year since no body of the blessed martyrs has been brought to light from the Roman cemeteries, which are called the Catacombs, for the pious veneration of the faithful, with legitimate authority. Therefore, although many have requested that some bodies of the martyrs be granted to them, in no way has it been possible to satisfy their pious desires. But in these past years, due to the expulsion of religious men and sacred virgins from their dwellings, many churches have been destroyed or abandoned, and the relics of the Saints, which had long been removed from the cemeteries and hidden in wooden chests within the cloisters of monasteries or beneath the altars, together with the other furnishings of the churches, were publicly sold throughout Italy. There were not lacking men alien to the faith, and even worse, Christians, who sought to purchase these items in the hope of profit, and who would strive to establish a monopoly over them. This abominable commerce was imme-

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diately made known to the Most Holy Pope Leo XIII, the Supreme Pontiff, and both the sellers and the buyers were deterred from this practice by a decree, which, at his command, the Sacred Congregation for Indulgences and Sacred Relics issued on December 21, 1878 (1). However, such is the perversity of the times, that men, greedy for money and neglectful of their souls, since they no longer revere in the Supreme Pontiff that power by which they could have been restrained from such a nefarious act, have secretly and with even greater zeal persisted in this practice. (1) You will find this decree in Volume XI, page 365.

[*Latin ed. p. 40*]

40. Meanwhile, several faithful, ignorant of this decree, moved by love of God and religion, believing they were acting rightly if they redeemed relics of martyrs from the hands of infidels, acquired wooden chests in which those relics were contained, even at a great price, and brought them to the urban repository, in order to have them examined. Some of these chests bore with them authentic old documents, while others lacked them entirely; all, however, appeared to be ancient, bearing signs and other indications of antiquity. After an examination was instituted, and the chests, which were deemed of doubtful authenticity, were retained, whatever they contained was taken to the underground cemeteries. And it is truly regrettable that many such relics, purchased in Rome, were not brought before judgment, but were sent to distant lands, perhaps with the hope that they would be approved by bishops from foreign regions. As these reckless men were obtaining considerable profits from this sacrilegious commerce, they began to devise a new fraud. Indeed, they constructed chests, resembling old and legitimate ones, filled with false bones, and with signs copied from ancient ones, so that they would appear to be genuine; and they did not fear to forge even the authentic documents themselves, with the same fraud and artifice, thereby deceiving many. These deceptions and frauds were not always able to be detected, and indeed, it is to be feared that even the ministers of the sacred repository, ensnared by deceit, might sometimes fall into the traps of the forgers. Therefore, a diligent investigation is now being carried out, in which it is sought to discover who the authors of these crimes are, and who their accomplices have been. In the meantime, the task of warning the bishops has been entrusted to me by the Most Holy Pontiff, so that they may regard with suspicion all bodies of martyrs, which are said to have come from the ancient Christian cemeteries of Rome, and which are now presented to the prelates of the Churches, and that they may not allow them to be offered for the veneration of the faithful, until they are instructed by new documents as to how they should act concerning them. This matter, being of great importance, is commended to the prudence of Your Eminence, to whom I pray for all good things and happiness from the Lord. Given in Rome, from the offices of the Vicariate, on the sixteenth day

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before the Kalends of February, in the year 1881. Your most devoted and obedient servant, R. CARDINAL VICARIUS.

[*Latin ed. p. 41*]

41 APPENDIX I. IN WHICH MORE ARE PRESENTED OF THE DECREES OF THE HOLY CONGREGATION OF RITES. The Most Reverend D. Benedict Sans y Fores, Bishop of Oveten, in order that all matters concerning the liturgy may proceed correctly and in an orderly manner, has proposed the following questions to the Sacred Congregation of Rites, namely:

P. 1. Questions concerning the recitation of the Office.

QUESTION I. Regarding the Office of the Titular Church of a Parish, held under the double rite of the first class, with the Octave, are only the Parish Priest or Vicars obliged, or are Assistants also obliged, according to the mandate given to them by the Ordinary, so that they may serve in the administration of the Sacraments and other parochial offices?

QUESTION II. It has been agreed upon, both by the Apostolic Nuncio in Spain and by the civil authorities, that Assistants should be established permanently, collaterally, and truly as ecclesiastical benefices, according to the most recent agreement; however, this has never been done due to disturbances that prevent the execution of that Agreement. If the answer to the first question is negative, is it asked: after the execution of the aforementioned Agreement, will those who are appointed as Assistants be strictly bound and attached to the Office?

QUESTION III. Of the Assistants, some are assigned by the Ordinary to the service of Parishes, which, besides the Parish Church, have another filial church, so that those residing there may administer at least some of the Sacraments, the Eucharist, and Extreme Unction to the faithful who depend on the Parish Priest; are the Assistants obliged to the Office of that filial church, or is the Parish Priest alone obliged, or are both obliged?

QUESTION IV. Those who are appointed by the title of Patrimony are immediately assigned to a church in order that they may celebrate Mass and serve the Parishes, but not as true Assistants. In these churches, the Office is not recited in choir. It seems to be the case, according to the law, that one cannot, nor should one, recite the Office under the double rite of the first class; however, some believe that they are obliged by the title of assignment, and in fact recite it. Can this practice be extended to all these cases?

QUESTION V. The majority of the Parishes in this Diocese are formed from various towns or villages, some from only one. From time immemorial, the Titular Church of...

[*Latin ed. p. 42*]

42 APPENDIX I. The feast of Saint Roch, as patron of a locality, or of

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localities within the same parish, is observed by the faithful, and his feast day is held, as is fitting, under both precepts.

DOUBT I. In some parishes, are there clerics who hold the title of Saint Justus and Saint Barnabas, and are considered as patrons of the locality, or of specific localities?

DOUBT VI. Among the chapels, are there those that have received the sacred orders of the priesthood, and are therefore numerous? Many have received the sacred orders of the priesthood under the titles of Saint Justus, Saint Cosmas, and Saint Damian. One is under the title of Saint Justus, another under the title of Saint Cosmas, and a third under the title of Saint Hemeterius, to whom, in the *Martyrology of Spain*, is assigned the same day as his brother, Saint Celidius. On the ninth of August, Saint Justus, who is celebrated with his brother Barnabas in Spain. On the twenty-seventh of September, Saint Cosmas and Saint Damian are celebrated, with a brother having the office. On the twenty-eighth of November, Saint Acischius, to whom, with Saint Sodorus and Saint Victoria, an office is assigned in Spain. All of these, in the nocturnal readings, are joined together, so that they cannot be separated, especially those of the first class, who are held to be observed with their octave, and in fact are recited, even if afterwards the parish is held under a different title, or in the administration of goods, and the obligations of Mass are fulfilled in the chapel.

Commentaries, Volume II, section III, chapter X. Concerning the observance of the Office, or of Transferred Feasts. § VIII. It is said: "Those who are joined together should not be divided, and especially if there is some kinship or affinity between them; therefore, Saint Mark and Saint Marcellianus, who were brothers, should not be divided, even if one of them were a deacon or a titular."

In the Decree of the Sacred Congregation of Rites, dated May 2, 1801, it is read: "If the Office is to be celebrated under a lower rite, it should not be recited separately from the feast of the Church."

[*Latin ed. p. 43*]

)ix i. 43 The feast of the Seven Brothers is observed; the Saints are celebrated with ten days, but for all, the Office is joined together with that of Saint Felix, and so it is to be performed. "To what extent is it permissible to follow the teaching of Merati, according to which...?" QUESTION IV. Among the things to be observed concerning Saint Felix, is there an Office that is celebrated in the churches on certain days? How and when should the Office be separated from the celebration of the Saints, and transferred, not on August 1st, but on the 21st of February, when, during the Octave of Saint Titus, there is no free day for the people in the forum? Note that there is also the fact that the Saints Hermeterius and Celidonius, two centuries ago, distinguished themselves with their own prayers and hymns, marked by a sculpted mitre and staff, and that the Saints Justus and Ta, in ancient

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and more recent writings of the parish of Saint Felix, are mentioned, as are those dioceses which have the same titular saint, and Saint Felix of Africa, who is venerated on August 1st. The reason for celebrating the Office on the 19th of February cannot be other than that it is done on the 21st of January, together with the Saints Augurius and Eulogius, Deacons of the same, for the separation of them; can the rule be followed, as transmitted by the Sacred Congregation of Rites on September 4th, 1745, in Aquén, for the separation of Saint Dionysius and his companions in the martyrology, both in prayer, which is proper and suitable to each, as in the others? QUESTION III. Are the following Saints titular saints: Saint George on April 23rd, Saint Felix of Africa on August 1st, Saint Mammas on August 7th, Saint Rosa of Viterbo on September 4th, Saint Aemilianus, Confessor, on November 12th, and Saint Saturninus, Bishop, on November 29th, and in which other dioceses is the Office celebrated? For Saint Christopher, the day assigned is July 25th, on which the feast of Saint James the Apostle, Patron of Spain, is celebrated: therefore, Saint Christopher must be transferred. In the aforementioned Ovetensi Breviary, it was celebrated on the 27th of that same month, and in one...

[*Latin ed. p. 44*]

44 APPENDIX I. At least from the parishes of that Saint, this very day has been celebrated since then as the titular feast, with the translation of Saint Pantaleon, which is celebrated in Spain with a quadruple rite. Can this very day be perpetually assigned as the proper day for other places, according to the ancient Breviary, beginning with that Octave, so that the Office of the titular Saint is not unduly delayed, since no free day can be found until August 26th?

DOUBT VI. Saint Adrian is the titular saint of three parishes. In one of these, the Office was never celebrated for him; in the others, it was celebrated on the 8th of September, with the Office of the Nativity of the Blessed Virgin Mary being transferred. In the ancient Breviary, the Office of Saint Adrian was celebrated in the diocese on the 7th of the same September, so that the feast of the Nativity would not be transferred. Can it be done in the future, by reciting the titular Office on the 7th of September, or on the 9th, as in the diocese of Salmatieen, where it is celebrated by all with a semi-double rite?

DOUBT VII. The feast of the Most Holy Name of Jesus, to be celebrated on the second Sunday after Epiphany, may coincide with Saint Anthony the Abbot, who is the titular saint, or with Saints Fabian and Sebastian, who are also titular saints of some churches. The 28th of January, to which the feast must be transferred according to the rubrics, is impeded by the feast of Saint Julian, Bishop and Confessor, with a double rite of the second class in this diocese, without an Octave. Perhaps no other day before Lent will be free, since the first is February 21st, and in the church of Saint Fabian,

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and likewise in the church of Saint Sebastian, it is the 21st, while the 20th is assigned as the proper seat for the Saint, separated from the titular Saint. In the Decree of the Sacred Congregation of Rites of September 2, 1790, for Spain, it is read: "The Office of the Most Holy Name must be transferred by the Bishop to another day within the same [Octave of Saint Julian], if another feast is encountered, unless it is of a higher rank." Since, however, in this diocese, the feast of Saint Julian is celebrated without an Octave, according to the Decree of July 21, 1870, the question arises: how should the aforementioned transfer of the Most Holy Name of Jesus be carried out? Should the rule established in the Decree be followed, even if Saint Julian does not have an Octave?

DOUBT VIII. Saint Romanus is the titular saint of one of the parish churches. His feast is celebrated on February 28th, even in a leap year, according to the Decrees of the Sacred Congregation of Rites of September 7, 1680, and March 1, 1681. In these, it is declared that the particular Office assigned for February 25th must be transferred to the first day without an Office of nine readings, if it is a titular or patronal feast; the Sacred Congregation answered that the same should be understood for other Offices that occur on subsequent days of February. Since Saint Romanus is the titular saint of the church and the patron of the place, he retains his seat even in a leap year, and therefore is celebrated on the 28th. His Octave is almost never complete because of Lent. Until the end of this century, it will only have a complete Octave once. Also, because of the frequent occurrence of the day of the Octave, which will be March 7th in a common year, and March 6th in a leap year,

[*Latin ed. p. 45*]

The Office of St. Thomas Aquinas, which falls on the seventh day, is changed permanently, but it is transferred as if accidentally impeded, if the Octave of St. Romani is celebrated in full during a common year; is this done correctly?

QUESTION IX: On the thirty-first of December, in some parishes, the Office of St. Columba, the titular saint of those parishes, is celebrated; therefore, is the Office of St. Sylvester, Pope, permanently impeded? It is asked whether it should always be reduced to the simple rite, or rather, transferred to the first of January, as was done in Spain, according to the constitution of Pope Gregory XIII, with the Office of St. Thomas of Canterbury, which fell on a Sunday within the Octave of the Nativity of Our Lord Jesus Christ, because the thirtieth day was impeded by the feast of the Translation of St. James the Apostle.

Furthermore, the same Sacred Congregation, upon hearing the written opinion of another of the Masters of the Apostolic Ceremonies, after mature deliberation and consideration, decided to respond as follows:

1. Regarding questions concerning the recitation of the Office:

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* I. Whether Coadjutors are also bound to observe the titular Office of the Church in this case. Answer: Yes.

* II. Affirmative.

* III. Negative for the first part, that is, whether only the parish priest is bound.

* IV. Negative, according to the decree in Mechlin.

* V. Affirmative.

* VI. Negative.

* VII. Negative.

* ix i. 45

2. Regarding questions concerning titular Offices:

* I. Whether the aforementioned Saints, who are intrinsically and by nature connected in the Calendar, of whom either one is the titular saint of the Church, or the relics of the other are kept in the Church, should be separated. Answer: No.

* II. Affirmative, according to the proposed schema.

* III. For the sake of expediency, as requested.

* IV. Nothing should be changed.

* V. This custom can only be tolerated in the aforementioned churches.

* VI. The feast of St. Adrian, the titular saint of the church, should be celebrated on the eighth of September, transferred to the first day free from the Office of the Nativity of the Blessed Virgin Mary, according to the rubrics.

* VII. The feast of the Most Holy Name of Jesus should be transferred to the first day free from the Office, according to the decree in Mechlin, of May 22, 1841, in case 3.

* VIII. The established custom should be maintained.

* IX. Affirmative for the first part; negative for the second.

And thus, it responded, granted an indulgence, and ordered it to be observed on August 11, 1877.

SENEN. Director of the Calendar for the Divine Office to be recited and performed in the Archdiocese of Siena, submitted the following questions to the Sacred Congregation of Rites for appropriate resolution:

QUESTION I: Whether in the Secret of the Mass of the Feast of the Seven Sorrows of the Blessed Virgin Mary, ”suorum” or ”suae” should be read, and whether ”suorumque” or ”suarumque” should be read, as is the case in some places.

[*Latin ed. p. 46*]

46 APPENDIX I. Are these questions found in more recent editions of the Roman Missal?

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DOUBT II. How many times during the Paschal season must the Most Holy Sacrament of the Eucharist be administered before and after the Mass of Requiem, and must the prayer for the time be said, and must the "alleluia" be added in the verses?

DOUBT III. When the Cross is unveiled on Holy Friday, the rubric of the Missal prescribes, for the second action, that the right arm of the Cross be unveiled, but in the "Caeremoniale Episcoporum" it is prescribed that even the head of the Crucifix be unveiled. The question is whether the prescription of the "Caeremoniale Episcoporum" should be observed?

DOUBT IV. Since some discrepancies appear between the General Rites of the Missal and the Rubrics of the Order of the Mass, the question is whether one or the other should be followed; and specifically: 1. Whether it is necessary to observe what is stated in Rite IV, no. 3, of the celebration of the Mass, namely, "after the Gospel, raising and extending his hands towards the cross," which, according to the Order of the Mass, reads: "Then... extending, raising, joining;" 2. Whether the cross should be formed over the oblations when it is stated in Rite 1 of the celebration of the Mass in this way: "This holy sacrifice," or as it is placed in the Canon, namely, "This holy;" 3. Whether the statements contained in 4 and 5 of Title X, after the words "Then arranged," etc., up to the words "the chalice of salvation," which are not arranged in the same order in the Canon, should be strictly observed?

DOUBT V. Should the paten be made of the same material as the cup of the chalice; and are planets made of wool permitted?

DOUBT VI. In Pisa, on May 15, 1819, it was decreed that when the feast of Saint Urban, Pope and Martyr, is celebrated with a double rite, it is transferred to May 25, along with the feast of Saint Gregory VII, Pope. The question is whether one should strictly adhere to this decree, or rather to the disposition of the Calendar for the Clergy of Rome, in which the feast of Saint Gregory VII is fixed for May 25, and the feast of Saint Urban is transferred to the 28th of the same month?

DOUBT VII. Should it be held everywhere that what was decided in the Order of the Minor Franciscans on August 8, 1835, is true, namely, that the first nocturne of the Office of the Translation of the Blessed House of Loreto should be: "This is the house of God, and the gate of heaven?"

DOUBT VIII. Can a priest celebrate Mass whenever he lacks a minister, or is not suitable, or when there is no grave necessity for celebrating?

The Holy Congregation of Rites, after having sought the opinion of one of the Masters of the Apostolic Ceremonies, and after carefully considering the doubts presented in the report of the undersigned Secretary, has decided as follows:

To I. Let a decree be given in Regensburg, on May 25 of this year (1).

To II. Postpone, and inquire the opinion of another of the Masters of the Apostolic Ceremonies.

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To III. In the case of Bishops, the "Caeremoniale" should be followed, as it is clearer.

To IV. The celebrant should consult approved authors.

(1) See such a decree in Vol. XIII, page 273.

[*Latin ed. p. 47*]

i. 47, decreed in a meeting held on May 15, 1819. In accordance with Decree No. 8 of August 1835. In accordance with Decree No. 8, the consulter should consult approved authors. And so it was decreed on December 18, 1877. IX, Ad V. Regarding the first part, let the Decree of August 31, 1867, concerning Dubium IV be given; (1) regarding the second part, the use of woolen cloths in churches is not permitted. Ad VI. Affirmative, according to the following: SUPPLEMENT TO GENERAL DECREES CONCERNING THE CAUSES OF SERVANTS OF GOD. In the General Decrees issued by His Holiness Urban VIII, Pope, concerning the proper performance of divine worship by servants, it is absolutely prescribed that, whether the cause proceeds through the way of worship or through the way of exceptional circumstances, a particular process must precede, together with the subsequent pronouncement of the Ordinary, or the judge delegated by the Apostolic See, either concerning the lack of worship or concerning the exceptional circumstances. The practice of the Sacred Congregation of Rites has long been in conformity with these Decrees, as is evident from the Acts of that same Congregation. Moreover, as testified by His Holiness Benedict XIV in his work on the Canonization of Saints, Book 1, Chapter 23, No. 10, it was established in accordance with the aforementioned Decrees that, through a particular process, not only should the beginning or foundation of worship, or of exceptional circumstances, be proven, but also the continuous worship of the same, until a judgment on this matter is issued by the Ordinary, or by a judge delegated by the Apostolic See; however, with the express or tacit consent of the Holy See, that judicial and legitimate investigation would cease, and the declaration of exceptional circumstances would be made through extrajudicial proofs. However, when the Most Reverend Fathers Prefects of the Sacred Congregation for the Defense of the Faith observed that the preparation of a particular process greatly contributes to a more thorough examination of the causes, after mature deliberation and after hearing the Reverend Promoter of the Faith, at the present meetings held at Vatican, they ordered that the tenor of the General Decrees and the ancient practice of the Holy Congregation should be observed more strictly in the future. Therefore, it was decided that, in the future, no exceptional cause should be approved unless it is preceded by a particular process, both concerning the beginning or foundation of worship, or of exceptional circumstances, and concerning the continuation of worship, until a judgment is issued by the Ordinary, or by a judge dele-

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gated by the Apostolic See. (1) You have this decree in Vol. XII, page 33.

[*Latin ed. p. 48*]

48 IX. Ad petitionem ad Sedem appellationis, debebitur emitti edictum, quo declaratur casus de quo agitur comprehendi inter exceptos ab illis Decretis Sanctissimi Urbani Papae VIII. Si SSmmo Domino Nostro placuerit. Die 5 Decembris 1868. Postquam per subscriptum Secretarium SSmmo Domino Nostro Pio Papae IX relatio facta est, Sanctitas Sua Decretum Sacrae Congregationis approbavit, et confirmavit, et typis editum publicari praecepit die 10 eiusdem mensis et anni. II. Sacra Rituum Congregatio, considerans processum, sive ordinarium, sive apostolicum, auctoritate pro Beatificatione et Canonizatione Servorum Dei extra Urbem confectum, gravissimam irregularitatem notavit in eo sitam, quod personis certum officium in processu instruendo gerentibus, postquam illo fungi coeperunt, venia data fuerit perdurante adhuc sive ordinaria, sive etiam apostolica eiusdem Causae inquisitione, officio primo dimisso, aliud diversae indolis assumendi et exercendi. Haec autem permutatio officiorum cum regulis iuris minime consona videtur; ideo eadem Sacra Congregatio, in Ordinariis huius diei Comitiis ad Vaticanum habitis, ad praedictum abusum removendum et suspicionem, quamlibet levem, in re tam gravis momenti, prorsus eliminandam, « censuit prohibendum, si SSmmo placuerit, ne deinceps in condendis quibusvis processibus, tam ordinariis, quam apostolicis, ad eiusdem Servi Dei Causam pertinentibus, eadem persona diversis officiis ne successive quidem, utcumque priori expleto et dimisso, fungi possit, sub poena nullitatis. » Die 10 Decembris 1870. Factaque de praemissis per subscriptum Secretarium SSmmo Domino Nostro Pio Papae IX fideli relatione, Sanctitas Sua praefatam Sacrae Congregationis decisionem ratam habuit et confirmavit, eamque praesenti generali Decreto promulgari et ab omnibus servari mandavit. Contrariis non obstantibus quibuscumque. Die 23 eiusdem mensis et anni (1). (1) Explicit appendix quarta Decretorum S. C. Rituum, adiicienda collectioni Gardellini. Quae appendix continet decreta ab anno 1867 ad annum 1877.

[*Latin ed. p. 49*]

49 FROM THE CONSISTORY ACTS Concerning the secret Consistory held on August 4, 1881. THE MOST HOLY LORD OUR FATHER, POPE PIUS IX, BY DIVINE PROVIDENCE, ADDRESSED THE FOLLOWING TO THE CARDINALS OF THE HOLY ROMAN CHURCH, IN THE VATICAN, ON AUGUST 4, 1881: Venerable Brothers, We have convened your most esteemed College so that, having the opportunity to act concerning the appointment of Bishops, We may express to you Our sentiments and share with you the grief that We have recently felt, due to the atrocious and nefarious events that occurred in the City, when the remains of Our Predecessor,

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Pope Pius IX, were removed. Regarding this unexpected and unworthy act, We have ordered Our beloved Son, the Cardinal, to return from public affairs to the Princes of Europe. Nevertheless, the injury inflicted upon Our great Predecessor and the violation of the dignity of the Holy See compel Us, on this day, to utter a firm decree, so that the sentiments of Our heart may be publicly confirmed by Ourselves, and so that all the Catholic peoples may understand that We, in every way possible, will defend the memory of the most holy man and the majesty of the Supreme Pontiff. Pius IX, as you well know, Venerable Brothers, ordered that his body be buried in the Basilica of Saint Lawrence, outside the walls. Therefore, since it was necessary to fulfill his supreme will in this matter, and with the advice of those who are charged with safeguarding public safety, it was decided that, from the Basilica, *Tom. XVI, cap. CLVIII*.

[*Latin ed. p. 50*]

Thus, the funeral procession was to be carried through the Vatican, in the silence of the night, at that time which is usually most quiet. It was also decided that the funeral should not be held with the pomp and circumstance befitting the dignity of the Pope and the institutions of the Church, but with whatever arrangements the present condition of the city of Rome would allow. But suddenly, the news of this spread throughout the city, and the Roman people, remembering the benefits and virtues of so great a Pontiff, spontaneously demonstrated their desire to offer the highest public obedience and piety to their father. This was clearly a testimony of grateful and loving hearts, worthy of the gravity and religion of the Roman people, since nothing else was intended than to properly accompany the funeral, or, as it proceeded, to be present in large numbers and with reverence. On the appointed day and hour, the funeral procession departed from the Vatican temple, surrounded by a vast multitude of citizens from all walks of of life, filling the streets and squares. A large number of devout men surrounded the bier, and an even larger number followed behind, with a solemn and dignified pace. From among them, prayers were offered appropriate to the occasion, and there was no voice or sign that seemed likely to disturb anyone, or to cause any commotion in any way. But behold, the hands of the wicked, not unknown from the beginning, sought to disturb the solemn office with clamorous outcries. Soon, their numbers and boldness increased, and they began to wail, to utter terrifying cries, and to curse the most sacred things, to hiss at and insult the most distinguished men: with threats, words, and anger, they surrounded the funeral procession, hostilely, and sought to attack them with blows and stones. Indeed, what no barbarity had ever attempted, they dared to do to the very relics of the Holy Pontiff. Not only was the name of Pius IX contemptuously uttered, but stones were thrown at the chariot in which the relics were carried, and repeatedly, the most inhumane ashes were hurled. And this continued for

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a long stretch of road, for the space of two hours, a shameful spectacle. If the matter did not go even further, it is to be attributed to the moderation of those who, although provoked and insulted with every possible means, preferred to endure the injuries patiently, rather than allow anything worse to happen to that solemn office. These events, known to all and confirmed by public monuments, those whose interest it is to deny or conceal them, attempt in vain. These events, whatever may be said about them, have not only filled the hearts of the Catholic nations with sorrow, but have also aroused the greatest indignation among all men who value the name of humanity. From all sides, letters arrive daily, denouncing the shame and the enormity of the crime.

[*Latin ed. p. 51*]

ALLOCUTION 51 But the infamous and grave affair has caused Us, before others, the greatest concern and anguish. Since We are compelled by duty to defend the majesty of the Roman Pontificate and to honor the memory of Our Predecessors, therefore We lament and deplore before You, Venerable Brothers, this most heinous crime, and We denounce the injustice inflicted upon Us, for which those are to blame who have not defended the rights of religion nor the liberty of the citizens against the fury of impious men. And let the Catholic world understand from this very fact how much security remains for Us in the City. — It was known and understood that We were being subjected to a harsh and, for many reasons, intolerable condition; but this recent event, of which We are speaking, has made this even more evident and clear, and it has also shown that, while the present situation is grievous for Us, the prospect of future events is even more grievous. — If the remains of Pope Pius IX were followed through the City by the most disgraceful disturbances and great tumults, who can deny that the same impious audacity will occur if We were to be seen walking properly through the City, especially if they believe that We have been compelled by duty to either condemn laws openly proclaimed in the City, or to publicly and unjustly condemn anything else. Therefore, it is increasingly understood that We can only remain in Rome at this time within the Vatican buildings. Indeed, if anyone carefully considers the signs that are spreading everywhere, and also reflects on the fact that sects have openly conspired for the ruin of the Catholic name, it can certainly be affirmed that more pernicious schemes are being devised against the Church of Christ, against the Supreme Pontiff, and against the ancestral faith of the Italians. We, for Our part, are carefully attending to the escalating stages of this conflict, as We should; and at the same time, We are considering what is most expedient for Our defense. With all hope placed in God, it is certain that We will strive with the utmost effort for the safety of the Church, for the liberty of the Pontiff, for the rights and majesty of the Apostolic See; and in that struggle, We will not shun labors, nor will We fear difficulties.

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And We are not alone, because We place great confidence in the virtue and constancy of You, Venerable Brothers. And the will and piety of the Romans themselves are also a great comfort and aid, who, surrounded by many dangers and harassed by all means, nevertheless persevere with singular fortitude in their obedience to the Church, in their faith in the Supreme Pontiff, and do not miss any opportunity to demonstrate how deeply these virtues are engraved in their hearts.

[*Latin ed. p. 52*]

52 ADDRESS Concerning the ecclesiastical hierarchy established in Bosnia and Herzegovina. Meanwhile, although we are beset by difficulties of time and circumstance in those matters which we have mentioned, yet mindful of the Apostolic office, we do not neglect to diligently administer our efforts in the matter of the Catholic Church, as far as is possible; and, aided by our endeavors and the supreme goodness of God, we continue to serve the benefit of the Christian people. — In this connection, we gladly recall here the recent concerns brought to our attention regarding Bosnia and Herzegovina. For, since we greatly desired to better order and more firmly establish the sacred affairs in those regions, after consulting with our most beloved son in Christ, Francis Joseph, Emperor of Austria and King of Hungary, in Apostolic councils, we undertook to establish an ecclesiastical hierarchy in those provinces. For this purpose, we elevated the seat of the city of Sarajevo, which is considered the principal city of Bosnia, to the dignity of an Archbishopric and Metropolitan See, and we ordered it to be called Verbosna; and we assigned and attached to it three episcopal sees, namely Banialuca, Mandretia, or Dumnia, and Mercan, and the episcopal see of Trebinje, which had been under the administration of the Bishop of Zagreb, as provincial sees, and we decreed that the bishops of those sees would be suffragane bishops of the Archbishop of Verbosna. Furthermore, Venerable Brothers, we command that copies of the Apostolic Letters, which we have ordered to be published concerning the ecclesiastical hierarchy established in the aforementioned regions, be delivered to you, so that from them you may understand the various affairs of the sacred rites in those places, and the entire account of what has been undertaken by us. We are confident that this undertaking, initiated by us, will certainly be fruitful, so that among the Slavic peoples, who love the light, with the glorious help of their Apostles and heavenly patrons, the religion of Christ may receive greater growth, and, as a joyful harvest of salvation from a fertile seed, may flourish and prosper, by the grace of God. Confirmation of the election of the Armenian Patriarch of Cilicia. Now it is pleasing to report to you, Venerable Brothers, concerning the recent co-option of the Armenian Patriarch of Cilicia. For, after that grievous [event], which you know, with almost all discord removed, he has shown

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himself worthy of the patriarchal dignity.

[*Latin ed. p. 53*]

With the greatest willingness, the Venerable Brother Anthony Hassun has resigned, to whom we deemed it fitting to confer the honor of the Roman purple, in recognition of his labors and virtues. Therefore, we have provided that the Venerable Armenian Bishops, assembled in Synod, should elect or nominate a new Patriarch. Due to unexpected difficulties, the matter was delayed; but finally, at a synodal assembly held in the church dedicated to the holy Name of the Mother of God, on the sixth day of the past month, the Venerable Brother Stephen Azarian, Archbishop of Nicosia, in the parts of the infidels, was elected Patriarch of Cilicia, named Peter X, by a majority of votes. These same Bishops, subsequently, in letters given to Us on the eighth day of the past month, testified to their obedience, and reported to Us all that they had done in this election; and understanding that the patriarchal dignity derives all its power and firmness from the blessed Peter, the Prince of the Apostles, who, by divine ordination, was appointed alone to give the keys of the kingdom of heaven to others (1), they, as was fitting, requested Us, through prayers, to confirm the synodal election with Our Apostolic authority. Likewise, the Venerable Brother Stephen Azarian, the elected or nominated Patriarch, supplicated Us in a letter sent to Us on the eighth day of the past month, together with a declaration of faith signed by him, which he presented to the Synod according to the form proposed by Urban VIII, clearly expressing sentiments of obedience and devotion towards this Apostolic See, and declaring that he would always remain faithful to its faith and authority. Therefore, Venerable Brothers, we are firmly confident that this same elected or nominated Patriarch, who, in the various duties he has performed, has always demonstrated clear evidence of obedience to the Roman Church, expertise in affairs, and constancy in maintaining Catholic unity, will devote himself to fulfilling all the duties of a good shepherd, faithfully, both in word, in deed, and in zeal for the salvation of souls. With this confidence, and after deliberation with Our Congregation for the Propagation of the Faith, which is responsible for the affairs of the Oriental Churches, and after hearing the prayers of the same elected or nominated Patriarch and his co-bishops, we have decided to approve, and we decree that the same Stephen Azarian be confirmed as Patriarch of Cilicia of the Armenians by Our Apostolic authority, and canonically instituted. Therefore, by the authority of Almighty God, and of the holy Apostles (1) S. Optat. Milev. I. VIII.

[*Latin ed. p. 54*]

54. We confirm and approve the election or petition made by the Venerable Armenian Bishops of Cilicia concerning the aforementioned Arch-

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bishop Stephen Azarian, whom we release from the bond by which he was held to the Church of Nicosia in lands of the infidels, and we transfer him to the Patriarchal Church of the Armenians of Cilicia, appointing him Patriarch and Pastor of that same Patriarchal Church, as will be expressed in the consistorial decree and schedule, notwithstanding any contrary provisions. In the name of the Father, and of the Son, and of the Holy Spirit. Amen.

Most Holy Father, after the allocution, the following Churches were proposed:

The Patriarchal Church of the Armenians of Cilicia, vacant through the free resignation admitted by Your Holiness of the Most Reverend Father Anthony Peter IX Hassun, who was subsequently elevated to the dignity of Cardinal, with the title of the Most Holy Martyrs Vitalis, Gervasius, and Protasus; favored by the Reverend Father, Bishop Stephen Azarian of Nicosia, who was duly elected or petitioned for by the Catholic prelates of Cilicia, and who, having assumed the name of Stephen Peter X, is promoted.

To the Patriarchate of Cilicia belong the Armenians who reside in Cilicia, Armenia Minor, Cappadocia, and Syria, as well as Mesopotamia, which, however, has been entrusted to Patriarchs for administration at the pleasure of the Apostolic See.

Furthermore, by the same indulgence, the entire ecclesiastical province of the Armenians of Constantinople was also added to him, formerly established by Our predecessor of blessed memory, Pius VIII, and permanently united to the Patriarchate of Cilicia by Apostolic letters dated July 12, in the year 1867. Therefore, the Patriarch of Cilicia does not reside in Mount Lebanon, as previously, but in the city of Constantinople, and he governs that same Church of Constantinople under ordinary jurisdiction.

The Most Reverend Father Stephen Azarian was promoted to the Patriarchate, who was born in the city of Constantinople on December 31, 1826, educated in the Pontifical Urban College, and raised to the priesthood, faithfully fulfilling the duties of the ecclesiastical ministry in that same city, and who exercised the power of Patriarchal Vicar, even in difficult times, and who, by Our predecessor of blessed memory, Pius IX, was promoted to the Archiepiscopal Church of Nicosia. He vigorously defends the Catholic unity that has been separated from the recent Armenian schism, and he has demonstrated his devotion to the Apostolic See.

[*Latin ed. p. 55*]

EPISCOPAL PROPOSITIONS were made. The profession of faith, which Pope Urban VIII had previously proposed to the Easterns, was duly issued at the Synod of Armenian Bishops, from among whom he was elected or nominated; and he sent the formula, signed by his own hand, to the Apostolic See.

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The METROPOLITAN CHURCH of CALARITAN was vacant, due to the death of Bishop John Anthony Balma, the last Archbishop of that see, who died near the Roman court; by the favor of the Reverend Father Vincent Gregory Berchialla, a priest of the Congregation of the Oblates of the Blessed Virgin Mary. He was born of legitimate, Catholic, and honorable parents in Alba Pompeia, and reached the age of fifty-eight. This priest of the Congregation of the Oblates of the Blessed Virgin Mary, having previously been awarded a doctorate in sacred theology, has hitherto served as the Procurator General of his Congregation.

The METROPOLITAN CHURCH of VIENNA was vacant, by the favor of the Reverend Father Celestine Ganglbour, of the Order of Saint Benedict, Abbot of the monastery of Kremsmuster.

The METROPOLITAN CHURCH of GOA, in the Orient, was vacant, due to the death of Archbishop Ayris d'Ornellas de Vasconcellos, the last Archbishop of that see, who died outside the Roman court; by the favor of the Reverend Father Anthony Sebastian Valente, a priest of the diocese of Beja, presented to the Most Serene King of Portugal and Algarves, a most faithful subject. Anthony Sebastian Valente, born of legitimate, Catholic, and honorable parents in Porto, in the archdiocese of Seville, reached the age of thirty-six; and he has served as a Professor in the theological faculty of the University of Coimbra.

The ARCHIEPISCOPAL CHURCH of TYRE, under the Patriarch of Jerusalem, in the lands of the infidels, was vacant, due to the death of Archbishop Charles Joseph Benedict of Argentau, the last Archbishop of that see, who died outside the Roman court; by the favor of the Reverend Father Dominic Jacobini, a priest of Rome. He was formerly a professor of the Greek language at the Pontifical Roman Seminary, and is now Prefect of Studies there; he has served as a consultant to the Congregations of Indulgences and Sacred Relics, the Supreme Inquisition, and Ecclesiastical Affairs. Formerly an official in the Congregation of Propaganda, in the Secretariat for Briefs, and in ecclesiastical affairs among the Secretaries, and hitherto acting as the representative of the Sacred Library of the Holy Roman Church, he was added to the domestic clergy of His Holiness, and has now renounced his position as Canon of the patriarchal basilica of the Vatican.

[*Latin ed. p. 56*]

56. EPISCOPAL CANONS: These [churches] have been adorned and have been vacant since their original establishment; by the favor of the Most Reverend, they are canonically united, vacant, and administered by the labor of the Reverend Father Sallustiani Crespo, a presbyter of the archdiocese of Caracensium, or Saint Iacob's, the last of those bishops of Venezuela, who, at the present time, outside the Roman curia, through the power of an Apostolic Indult, has passed away; by the favor of the Most Reverend Fa-

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ther Sebastiani Galeati, a presbyter of Imola. Ordained in the sacred order of the priesthood and having received, in both jurisdictions, the doctorate in sacred theology, he has diligently applied himself to ecclesiastical functions. For many years devoted to the care of the Ortiß and Caracas diocesan seminaries, of which he served as Rector, and he is currently a canon of the cathedral. In the city of Caracensium, near that university, he is a Professor of sacred theology, and recently also a Rector.

CATHEDRAL CHURCHES OF MELFI AND RAPOLLE: These are perpetually canonically united, vacant, and administered by the Reverend Father Ignatius Sellitti, who, with great willingness, having completed his duties in the service of His Holiness, was admitted by the same, by the favor of the Reverend Father Iosephi Camassa, a presbyter of the diocese of Lyciensis. Who, having been ordained in the sacred order of the priesthood under the Archbishop of Ephesus, diligently performed ecclesiastical functions, and until recently was a professor of sacred theology at the seminary of Lyciensis.

THE CHURCH OF CALABOSIEN, or DE CALABOZO, in the territory of Venezuela in South America, was, by the Most Holy Father Pius IX, through Apostolic letters dated March 9, 1863, granted the honor of a cathedral.

CATHEDRAL CHURCHES OF MACE-RATEN AND TOLENTIN: These are perpetually...

[*Latin ed. p. 57*]

OPPOSITIONS EPISCOPALES: The general office, successively fulfilled, and after the last See became vacant, the Vicarius Capitularis, and recently, a Canon of the Most Holy Royal Archbasilica of the Lateran resigned. By a Papal Brief, the following were instituted:

ECCLESIA ARCHIEPISCOPALIS AN-CYRAN', in heathen lands, to the Reverend Father D. Fideli Suter, transferred from the Church of Rosalien, in the same order.

PORTEN, in the states of America united by treaty, erected by His Holiness, to the Reverend John Mac-Mullen, from the Archdiocese of Chicago.

ECCLESIA ARCHIEPISCOPALIS STA-ECCLESIA CATHEDRALIS TREN-UROPOLITAN, in heathen lands, to the Reverend Father D. Massaia, transferred from Cassia, in the same order.

ECCLESIA CATHEDRALIS TONEN, erected by His Holiness, to the Reverend Michael O'Farrell, a Parish Priest in the state of New York.

ECCLESIA CATHEDRALIS PORTUS GRATIAE, to the Reverend Reginald Mac-Donald, a Parish Priest from Pitou, of the Diocese of Arichat.

ECCLESIA CATHEDRALIS CROS-SEN, to the Reverend Kilian Flasch, Rector of the Salesian Seminary near Milwaukee.

ECCLESIA CATHEDRALIS NOVAR-IEN, to the Reverend Winando E.

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Wigger, a Parish Priest of the Mission from Madison.

ECCLESIA CATHEDRALIS DAVEN-ECCLESIA EPISCOPALIS MARTIANEN, in heathen lands, to the Reverend Father Vincent Pesci, from Florence, of the Order of the Lesser Capuchins, appointed Apostolic Vicar of Patnensi.

ECCLESIA EPISCOPALIS THENE-DEN, in heathen lands, to the Reverend Father Joseph Fenouil, a student of the Seminary of Paris for foreign missions, appointed as a Vicar Apostolic in Yun-Nan.

[*Latin ed. p. 58*]

68 FROM THE HOLY CONGREGATION OF THE COUNCIL OF MATRIMONY, on September 7, 1880, and January 29, 1881. SUMMARY OF FACTS. Caietanus B., being twenty-four years of age, and Maria V., born in the year 1849, both of the Diocese of R., before the face of the Church, on May 4, 1873, validly celebrated their marriage, entirely disregarding the civil formalities. On the same day, they began to live together as husband and wife and to endeavor to consummate the marriage; but for four months they attempted this in vain, when it was discovered, as it is asserted, that Maria was incapable of fulfilling her marital duties. To ascertain the cause of this impotence, with the consent of her husband, she consulted with a skilled surgeon, along with her parents; who, after a preliminary examination, concluded that the woman suffered from complete atresia, and that the uterus and vagina were entirely absent. Caietanus, knowing this, immediately sent his wife back to her parents' home; and, by private authority, the spouses separated, both in body and in dwelling; (and this separation was ratified by a decree issued for this purpose by the Most Reverend Archbishop of R.). On December 6, 1873, Caietanus supplicated the Most Reverend Archbishop of R., that the marriage might be declared null and void due to the impotence of Maria in fulfilling the conjugal debt, as he himself had experienced, and as the surgeons would judge; so that he might be able to take another wife. But, in order that a more prudent course might be followed in this matter of such great importance, two other medical doctors, men of integrity and worthy of trust, were chosen by the Curia, under oath.

[*Latin ed. p. 59*]

5. And there was another examination of the girl's body, before the formal process was initiated. After the complete examination, the aforementioned two experts jointly testified in writing that Mary was impotent to perform the conjugal duty. Following this second examination, the spouses, Caietanus and Maria, appeared before the Reverend Vicarius foraneus on January 10, 1875, and unanimously requested the declaration of nullity of their marriage; as the Vicarius general himself testifies, giving the date of January 29 of the same month. Then the Archbishop ordered

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that the formal process be carried out; but, considering the hardship of the times, the poverty of the spouses, and the great distance of the spouses from the Episcopal Curia, the Archbishop presented the case to the S. C. C. [Sacred Congregation of the Council] and simultaneously requested that, in carrying out the process for the nullity of the marriage, the examination of witnesses of the seventh order, and the examination of the woman's body, might be omitted. To which the response was given on February 20, 1876: As it is explained, it does not seem expedient. Also, on May 20 of the same year, the response was again: "The Fathers of the Sacred Congregation of the Council judged that it could not be omitted, either the examination of witnesses of the seventh order, or the formalities and precautions prescribed for the examination of the woman's body, which affect the very substance of the proof." Therefore, with everything properly arranged, the acts of the process were initiated according to the Constitution of Benedict XIV, by the grace of God, and according to the Instruction issued by the S. C. C. on August 22, 1840. Caietanus was regularly summoned and questioned; but Maria refused to submit herself to the formal examination any longer, and she could not be removed from this obstinacy. While the process was being carried out according to the form of law and the response of the S. C. C., Caietanus contracted a civil marriage with another woman. On November 8, 1879, the Archbishop transmitted the acts of the process to the S. C. C., humbly requesting that the Apostolic See would deign to dispense with the formalities of the process concerning the examination of the woman's body, due to the absolute refusal that she stubbornly opposed. Considering these things, and having considered the poverty of the spouses, permission was granted.

[*Latin ed. p. 60*]

60. The cause of the marriage was presented economically, with the opinions of a theologian and canonist, and with the observations of the defender of the marriage bond, acting in his office, of which we provide a summary. *Synopsis Systematica*. This author stated that, from the process records and other documents, one could ascertain moral certainty regarding the lack of consummation of the marriage. And indeed, from the sworn testimony of Caietanus, and from the testimonies of seven witnesses brought by Caietanus himself, it was established that the marriage was not only not consummated, but could not have been consummated due to the girl's insuperable impotence. However, from the testimonies of Maria, also confirmed by oath, it appeared that the marriage had indeed been consummated. But Sánchez, in *lib. 7 de Impedim. Matrim.*, disp. 109, n. 9, states: "To a woman who asserts that she has been known by a man, more credence should be given, than to a man who denies it...". However, the author himself immediately adds: "...unless the man can prove, by the

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appearance of her body, that she is a virgin; in that case, credence should be given to the man." It is important to note that the testimonies of Caietanus were always consistent with each other and with the testimonies of the seven witnesses; not only with those witnesses whom Caietanus himself brought, but also with the testimonies of witnesses whom Maria brought, when the matter of the consummation was discussed. Therefore, it seems that the truth lies with Caietanus; and that the spouses were not colluding with each other, and that, although the woman remains separated from her husband, she does not desire the dissolution of the marriage bond. Furthermore, the assertions and testimonies of Maria are not consistent with each other. She first asserted that she had never had a menstrual period, and that, although she had experienced some desire for sexual relations, she later abhorred them because of the intense pain she suffered when attempting intercourse. Then, when questioned judicially, she stated that she did have regular menstrual periods, and that she did not abhor intercourse, even if she experienced pain. Furthermore, the sworn expert opinion of the Surgeons, although extrajudicial, constituted a...

[*Latin ed. p. 61*]

OF MARRIAGE 61. Matters of great importance are to be considered, because they are in conformity with the judicial testimony of the Mother of God. From these things it is clear that Mary experienced such a hardship, for which the consummation of marriage became impossible; because they asserted something truly extraordinary, namely, that the woman lacked a womb and vagina. Zacchias speaks of this impediment in book 9, Questions Medico-legal, volume 2, title 3, question 5, paragraph 3: "I say that the impediment considered by Canonists in a woman, due to the closure of the womb, is not always due to the hardness and thickness of that part which is called the hymen, but another kind of closure sometimes occurs, but more rarely from a certain preternatural membrane, as all physicians confess, which is found in very few, because, as I said, it is a preternatural thing." This membrane, he says, if it is found near the external opening of the womb, and if it is without any opening in pervia, as is verified in the case we are discussing, makes the consummation of marriage impossible. Therefore, Mary alone remains entirely in her assertions, which seem to support the consummation of marriage; although contradictions are involved. Therefore, this case would seem to belong to that number in which the husband proves that the marriage was not consummated. It can also be added that Sánchez says in book 7, on marriage, dispute 107, paragraph 3: "When the impotence of one of the spouses is evident by the judgment of physicians, the oath of the spouses is not necessary." In the case we are discussing, the woman's impotence is evident by the judgment of physicians. However, it must not be overlooked that many witnesses speak of the husband's attempts at copulation; from which a doubt could arise about

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the consummation that followed. However, from these testimonies it is clear that the husband did ejaculate semen, without, however, the due penetration of the woman's vessel. In this case, theologians generally believe that true marriage is not consummated; because, as La Croix says in book 6, part 3, paragraph 793: "Such an emission is not sufficient by itself, so that such spouses, if they are considered to have been done in a natural way, become 'one flesh'." And Coscius, on the subject of separation, book 3, chapter 2, paragraph 230: "It is clear that spouses never become 'one flesh'."

[*Latin ed. p. 62*]

62. OF MARRIAGES: It is possible for one flesh to be formed, if a carnal union occurs without penetration. However, it has been ascertained from the testimonies of Mary herself that this impediment preceded the marriage. She confesses that, just as in the final attempts, so also in the first attempts to consummate the marriage, she always suffered the same pain. According to the judgment of the physicians, the matter concerns a membrane that obstructs the vagina; which constitutes a natural and intrinsic impediment. For when a natural and intrinsic condition is established, it is presumed to have preceded; because that which is inherent in nature always seems to be present. This is confirmed by the perpetual absence of menstruation, which she secretly confessed to the physicians and to one of the witnesses, and which her mother also testifies under oath. In the matter at hand, there are grave reasons for a dispensation from marriage, and there is no doubt about it. Firstly, there is alienation of affections; for which reason a dispensation can be obtained by theologians. There is no hope of reconciliation, from which, above all, Caietan turns his mind and heart to another woman. There is also the fear of scandal: and indeed, a great scandal is generated from the fact that Caietan, while still bound to Mary, is living maritally with another woman, and retains her as his wife according to civil law, which is called *matrimonium in iuria*.

OPINION OF A CANONIST. The Canonist judged that it was not sufficient to establish the nullity of the marriage on the grounds of impotence. For the Archbishop was unable, due to Mary's opposition, to carry out the proceedings. Therefore, it was not possible to obtain, as full proof of the nullity of this marriage, the examination which was carried out by experts outside of the judicial process. For in order for this examination to be a legitimate basis for this judgment, it must be carried out according to the form of law; as "Instructio S. C. C. of August 22, 1840 (1)" teaches. However, the examination by the experts lacked many things; the parties were not summoned, namely, both the spouses and the defender of the marriage; and there was no bath, by which the condition could be better ascertained.

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(1) You have such an Instruction in Vol. I, 439.

[*Latin ed. p. 63*]

OF MARRIAGES 63, the quality of the multitude; and other things were lacking. All these things, since they are prescribed to discover the truth, affect the substance of the proofs, and therefore, its substantial form. And thus, their omission vitiates the proof and the process, as stated in *Gli Titoli*, book 11, on frigidity, and note 33. However, if this inspection has not been carried out according to the divine law, namely, by summoning the defender of the bond, then it becomes of no value, or of insufficient value. Indeed, the constitution states: "Whatever is done in judgment without the legitimate citation or notification of the defender, we declare to be null, void, and of no effect, and we wish it to be considered as null, void, and without effect." Regarding the lack of consummation of the marriage, the canonist judged that, according to the procedural records, the marriage had not been consummated in this case; and this, he says, is deduced from the sworn confession of the husband, from the sworn testimony of the wife, from the testimony of seven witnesses, and from the inspection of the woman's body made by three experts. And although this testimony of the experts is not fully conclusive for a true judgment regarding the nullity of the marriage, it is of great value in confirming the lack of consummation of the marriage. Because, as in cases where extrajudicial proofs are valid for the information and instruction of the mind of the judge, as stated by De Luca, book 15, part 1, on judgments, discourse 33, note 9, so much more in this case are they valid, in which, after other judicial proofs, both extrajudicial and supplementary and diminutive proofs are admitted; not only for the instruction and information of the mind of the judge, but also for the explanation and confirmation of other proofs; and because this testimony of the experts most accurately explains and confirms what Mary testified, regarding her inability to retain seed. And here, it is necessary to believe the experts in their art, in order to define questions even in judgment. - *L. penal*, chapter on judgments, chapter on homicide. To completely exclude the consummation of the marriage, it must not be forgotten that, according to the explanations of the experts, the wife lacked a vagina and uterus: and therefore, a marriage of this kind remains unconsummated.

[*Latin ed. p. 64*]

64. OF MARRIAGES. The Canonist continues: If just and urgent causes are present, a dispensation concerning a marriage, whether consummated or not, can be requested from the Apostolic See. The Canonist does not doubt that such causes are present in this case, saying: "One of the just and urgent causes for granting a dispensation concerning a marriage is when a husband, by all means, seeks to repel his wife, without a reasonable hope of her recovering her sanity, and when greater scandals are feared if he

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were to reconcile with her." Many Canonists report that Popes have indeed granted dispensations concerning consummated marriages. In our case, it is not permissible to doubt that this cause is present; for Caietanus, having entered into a civil marriage with another, demonstrates his absolute resolution not to reconcile with his wife, from whom he demands a divorce with great anxiety. Another cause is present in the permanent discord between our spouses. This discord is abundantly demonstrated in this case by the testimony of witnesses. Moreover, Sánchez, in book 2, chapter 16, number 4, among other things, states that mutual discord is a sufficient cause for granting a dispensation. Furthermore, among the other causes for which a dispensation is granted, Sánchez, in the aforementioned passage, number 3, states that a grave fear of future scandal is present, because this leads to great harm to the common good; and this is the opinion of the Doctors. Furthermore, in this case, the dispensation serves the good and decorum of the sacrament of marriage. Indeed, from the testimony of experts, it can reasonably be believed that the wife lacks a vagina and uterus, and consequently, she is perpetually and antecedently impotent. Therefore, the Canonist concludes: Although in this case there is no moral certainty of the nullity of the marriage, because the proofs fully establishing it were lacking, as has been said previously; nevertheless, from what has been said, a greater probability exists in favor of the nullity of the marriage than in favor of its validity. Nor does the passage in chapter [referring to a legal text] concerning the testimony of witnesses, where it is stated that in cases of doubt, judgment should always be made in favor of the validity of the marriage, present an obstacle; because, as Reiffenstuel states in book 4, title concerning frigidity and impotence, chapter 28, "When..." the Abbé and other Doctors say that this applies when...

[*Latin ed. p. 65*]

MATRIMONII 65 "Marriage can be consummated and have its effect, namely, the good of offspring, and a remedy for concupiscence. However, if this cannot be achieved, as happens when there is a danger to life in Potenza (1). From this, the Canonist concluded that through this dispensation, the good and decency of the sacrament of marriage, the spiritual well-being of the man, the peace and honor of the woman, are preserved.

OBSERVATIONS OF THE DEFENDER OF THE BOND. The defender stated that imperforation, or perfect closure, in women is an extraordinary condition; and that it is a defect of the womb and vagina. Therefore, many excellent men in the art of medicine have often declared that the opinions of those doctors who claim that a woman can be entirely without a womb and vagina are erroneous. However, since the matter is not established by conclusive proofs regarding the absence of the womb and vagina, one cannot speak of the nullity of the marriage. Nor is it permissible to say that the woman is imperforate and therefore incapable of intercourse; there-

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fore, the marriage is null, at least on this point. For a woman's imperforation certainly constitutes an impediment that is removed if it is natural, as Sánchez states in book 7, dispensation 93, question 2 (2). Experts in the art of medicine do not offer a judgment on the nature of the imperforation, since they are all in agreement in denying the existence of the womb and vagina. However, from their silence, we can infer that Mary could undergo an incision without danger of death. For the membrane found in her was seen to be unnatural, not very hard, but soft (1).

Even Coscius, in his work on separation, book 3, chapter 2, number 36 and following, adduces another reason to justify granting a dispensation in cases of doubt, namely, that since we are dealing with the introduction of an injury and prejudice to the same sacrament of marriage, the rule proceeds in the opposite direction, namely, that in doubt, one must stand for the exclusion of marriage: and for a valid reason, because in the external forum, in which the Church judges, it is more tolerable and honest to dissolve the marriage according to the laws and proofs, and according to the discipline of the Church, than to, in the name and by the law of marriage, provide an opportunity for incontinence, and to foster continuous sin. (2)

From the chapter on Fraternities concerning frigidity and malice, it is determined what kind of imperforation can be called perpetual. However, we carefully observe that it was not perpetual, because, apart from a miracle, it could be removed by human means, without corporal danger.

[*Latin ed. p. 66*]

66. Osculum posita super matrimonium et prope vulvam; ideoque ea esse, ut facile curari possit. Proinde, ceu impedimentum haberi non potest ne matrimonium dirimatur, si morbus curabilis sit, etiamsi illa incisionem recusaret. Quod si etiam hac re dubium aliquid oriri posset, haec sententia sustinenda esset ex communi adagio: « in dubio standum esse pro matrimonio. » Neque melioribus auspiciis res definiri potest per dispensationem: nam gravis nascitur difficultas ex actis tam intrinsece quam extrinsece consideratis. Et ceteris praeter missis, ait Defensor, deest omnino probatio pro non consummatione matrimonii ex corporis mulieris inspectione. Id grave esse docet Sánchez, *lib. 2 de matrim.*, *disp. 13, n. 1, 2*, cum inspectio corporis mulieris necessaria sit, ut credi possit sponsis, se matrimonium non consummasse iurantibus: « quia agitur de virgine, quae ut talis post aspectum apparere potest. » Dici nequit in casu mulierem recusasse inspectionem: eam recusavit tantum ne iterum novis doloribus et molestiis subiiceretur, sicut evenit cum chirurgi, per violentos digitorum suorum motus, uterum in ea requirbant. At modo admonita quod inspectio fieret per obstetrices, et quidem per visum et leves tactus, ut unice constaret eam virum non fuisse expertam, certe non recusaret! Et quidquid futurum esset, saltem de inspectionis possibilitate iuridice constaret. Inspectio a primo perito facta nihil prodest, quia caret omnibus requisitis a lege praescrip-

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tis; nam a sponsae parentibus electus fuit et de inspectione facta fidem dedit, nullo iuramento firmatam. Ceteri ab Ordinario deputati absque balneo fecerunt, neque seorsim, sed una simul inspectionem fecerunt. Hinc si, etiam iudicio consultorum, ex hac inspectione concludens probatio haberi nequeat, ex defectu formae, pro definienda matrimoniinullitate, neque habetur pro inconsummatione declaranda. Quae enim per Instructionem S. O. C. definita sunt, sive de forma processus, sive de inspectione corporis coniugum, valent, sive agatur de verificanda impotentia, sive de verificanda inconsummatione.

[*Latin ed. p. 67*]

67. Having excluded this kind of proof, no other remains, except that which might arise from the confession of the spouses; which holds great weight if it is consistent, sworn, and excludes collusion. But in a woman, consistency is lacking; so that he who wishes to defend the lack of consummation accuses the woman of lying; although this is not known by right, while the girl is declared by all witnesses to be honest and religious. Others say that, due to a defect of understanding, she erred when she responded that she believed that the marriage had been consummated through the mingling of seed. From this confession, rather, proof must be obtained that the marriage was truly consummated, and that no dispensation can be granted. Indeed, the Sacred Congregation of the Holy Office stated in the case of Valentinen, March 24, 1764, in the matter of marriages: "The foundation and basis of a dispensation from impediments is that it must first and manifestly be established that there is no consummated marriage; otherwise, in any case, the canons do not apply, as if it were a matter forbidden and placed above human power." Regarding the existence of a grave cause, it is not necessary to speak, says the defender, when there is doubt about the consummation of the marriage. Therefore, he concluded: since no marriage can be declared null because of the woman's impotence, of which there is not sufficient evidence; and since a dispensation cannot be granted, because there is not sufficient proof of the lack of consummation, therefore, every petition must be rejected. With these premises stated, the proposed questions must be explained. I. Whether it is established that the marriage is null in this case. And to this, negatively. II. Whether it is necessary to consult the Most Holy Congregation regarding a dispensation concerning a marriage that is valid but not consummated in this case.

RESOLUTION. The Sacred Congregation, having considered the matter, decided on September 11, 1880, to respond as follows: To I. It will be provided in the second. To II. Affirmative, forbidding the woman from entering into another marriage, without the consultation of the Congregation.

[*Latin ed. p. 68*]

68. Regarding marriages, by custom, the following question is posed

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in the form of a doubt: – Whether one should adhere to or depart from the decisions made in a particular case. The Sacred Congregation of the Council, on January 29, 1881, responded: – In accordance with the previous decisions. FROM WHICH ONE MAY GATHER THE FOLLOWING: I. That, besides other things, the mingling of seed and the appropriate union for generation are required, so that a man and a woman, through carnal union, become one flesh; and that the marriage may be considered consummated. II. That impotence is to be considered as that in which a man is unable to penetrate the woman's womb, even though he may ejaculate semen upon its entrance. III. That the perpetual absence of menstruation in a woman constitutes an impediment to marriage. IV. That a marriage has not been consummated is proven by the sworn testimony of the spouses, by the testimony of seven witnesses, and by an examination of the body, carried out by experts. V. That dispensations granted by the Apostolic See, for the good and decorum of the sacrament of marriage, for the spiritual well-being and peace of the spouses; who, by reason of the danger of impotence, would have the opportunity for incontinence, and would constantly encourage sin, are permitted. VI. That, therefore, in cases where canonical causes exist, a dispensation regarding a valid marriage has been granted, with the condition that the woman not enter into other marriages, without the consultation of the Congregation, since there are many indications of her perpetual and incurable impotence.

[*Latin ed. p. 69*]

69. MARRIAGES. On December 10, 1880, and April 9, 1881, a summary of the facts. On April 6, 1870, Prince Peter P., aged 40, who had been residing in Lutetiae, Paris, for about six years, due to emigration, and the Countess Theodora, a widow, of the same diocese, aged 38, who had arrived in that city a few days prior, entered into a marriage contract, and in fact, they were married in a private house belonging to a certain priest, Joseph H., from whom they received the nuptial blessing. The aforementioned priest also delivered to the Prince a private written agreement of the marriage contract, signed by himself and two other individuals, who served as witnesses. However, it does not appear that the matter proceeded according to the requirements of the sacred canons and the decrees of the Council of Trent; indeed, as can be gathered from the procedural records drawn up in the Parisian court, neither was the priest the proper parish priest of the spouses, nor did he obtain a delegation from their own parish priest or Ordinary, nor do the two witnesses who signed the agreement appear to have been present at the marriage ceremony, but only a certain woman, the Countess's chambermaid. A few days after the beginning of this marriage, the spouses traveled to Brussels, with the intention of establishing their domicile there, where, while residing there, the woman gave birth to a son on February 17, 1872. However, two or three years after the birth of

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the child, doubts arose concerning the validity of this marriage, and these doubts grew daily, so that the Prince exerted all his efforts to persuade his wife, Theodora, to renew her consent before the proper parish priest and witnesses; but she steadfastly refused.

[*Latin ed. p. 70*]

70. Having entered into marriage, they separated from each other, and remained separated forever. After some time had passed, Theodora approached the archiepiscopal Curia in Paris, requesting that the marriage contracted by her with the Prince be declared null. And after reporting the matter to the Apostolic See, on June 16, 1879, the Most Reverend Archbishop of Paris was charged to proceed with the process according to the Constitution of Benedict XIV – God's Mercy – in order to investigate this matrimonial cause, until a final judgment was reached. The Most Reverend Archbishop delegated a judge and duly constituted a tribunal, from which, after the proceedings were brought to a conclusion, and with the Defender of the Bond offering no objection, a final judgment was rendered declaring the marriage null, due to the impediment of clandestine celebration. From this judgment, the Defender of the Bond immediately appealed to the Sacred Congregation of the Holy Office.

A synopsis of the arguments. DEFENSE OF THE COUNTESS. First of all, the advocate arguing for the nullity recalls the impediment of clandestine celebration, which, as stated in Scavini's *Theologia Moralis*, volume 4, page 509, edition of Paris, is found in the decree of the Council of Trent, Session 24, chapter 1, concerning Matrimony, which prescribes that all marriages of the faithful must be celebrated before their own parish priest, or another priest from the same parish, with the permission of the Ordinary, and also in the presence of at least two or three witnesses; and that marriages contracted otherwise are entirely invalid and the spouses are completely incapable of contracting marriage; so that, according to the Sacred Congregation, in the case of Fagnano, such clandestine unions cannot even proceed to the betrothal. Furthermore, since the matter concerns a marriage contracted in a place where the decrees of Trent were promulgated, and since the proper parish priest, or a priest from the parish with the permission of the Ordinary, and at least two witnesses were not present, there is no doubt that such a marriage must be declared entirely null and void.

[*Latin ed. p. 71*]

MATRIMONII 71. Now, concerning the fact that all these things occurred, it is abundantly clear from the sworn testimony of the spouses, the Priest who officiated at the marriage, and the unanimous testimony of the other witnesses. Baldus, in his *Leges*, in the sections concerning witnesses, number 36, teaches that the sworn testimony of the spouses

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is to be held in the highest regard; and the sacred canons prescribe that the confession of the spouses regarding the lack of consummation is to be given credence. This is evident from chapter 4 concerning proof. The resolutions of the Sacred Congregation [Consilium] are also in agreement, especially those concerning Burdigala, dated February 26, 1825, regarding the dispensation of marriage. In summary, how much weight a consistent testimony from all witnesses carries, even with the presence of older individuals, is known to no one, since two consistent witnesses provide complete proof: *L. Ubi numerus* in the sections concerning witnesses; *Cap. Super hoc de renunc*; *Cap. In nostra de test, et attestât*. Furthermore, if the sworn confession of the very individuals involved is added, namely, the Priest who blessed the marriage, without the permission of the parish priest or Ordinary, the matter is placed beyond all doubt; for the sworn confession of a matter, supported by the consistent testimony of all witnesses, is the queen of proofs, making the matter manifest, establishing a legal certainty, and having the force of a judgment and a decided matter: Fieiffenst., book 2, Decretals, title 18, numbers 62 and 64. Therefore, from this unanimous and consistent sworn testimony of the spouses, the witnesses, and the Priest who blessed the marriage, twenty points are deduced, which, when considered together, clearly demonstrate that the marriage in question was, in fact, invalid and null due to the impediment of clandestine marriage. And, first, it is established that the woman did not have her domicile in Diana Veteranorum at the time of the marriage contract. Indeed, she testified that she had only arrived in Diana Veteranorum the day before the wedding, and that she had insisted on contracting the marriage and then returning to Bruxellae, with the intention of establishing her domicile there. This is consistent with the testimonies of the Prince, the Priest, and other witnesses. From this, the advocate concludes that the woman did not have her domicile in Diana Veteranorum at the time the marriage was contracted.

[*Latin ed. p. 72*]

72. MARRIAGES 2. It was established that a woman, coming from Lithuania, had not brought with her any documents by which the Priest would be authorized to perform the marriage, and that she declared, through the confession of the Priest himself, that she had not obtained any authorization to enter into marriage. 3. It was established that the Priest H. had not received any authorization from the Archdiocesan Curia of Paris. 4. It was established that this marriage had truly been contracted on April 6, 1870, in the Priest's house. This is evidenced by a document delivered by the Priest himself to the Prince, after the marriage had begun, and by the testimonies of the aforementioned Priest, the widow, and the Prince, as well as by the testimonies of other witnesses. 5. It was established that

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the aforementioned Priest had been chosen for this purpose by one Prince. This is deduced from the confession of the woman, the Priest, and the Prince himself. 6. It was established that the Priest H. had never been the proper parish priest of either the Prince or the widow, neither in Poland nor in Paris. This is testified to by the spouses and by the Priest himself. 7. It was established that the marriage was contracted in secret, either so that the former husband's family would not be offended, or so that the wife's property would not be given to the Russian government: this is because the Prince was exiled, and had suffered losses due to political changes. 8. It was established that, in order to maintain secrecy, no witnesses were called, and only one girl was present. This is consistent with the testimony of the Priest, who stated that he had not required the presence of two witnesses, and that the two names of witnesses written on the document, which was written by the Priest himself, were merely arbitrary. Furthermore, the testimony of the Prince confirms that, besides the girl S., neither a man, nor a servant, nor a female servant was present at the marriage as a witness. 9. It was established that, in order to maintain secrecy, this marriage was not recorded in the parochial registers, and that its proof depended on the document which the Priest had delivered to the Prince. This is derived from the testimonies of the Priest himself, the spouses, and the girl S.

[*Latin ed. p. 73*]

MATRIMONII 73

10. It is established that the spouses had the serious and free intention of contracting marriage.

11. It is established that the woman, on the contrary, had acted in good faith, and that she believed the marriage to have been validly contracted.

12. It is established that a child was born from this marriage in the month of February of the year 1872. This is deduced from the registry of baptisms of the parish church of St. Boniface in Ixelles, a suburb of Brussels, as well as from the concurring testimonies of the spouses and witnesses.

13. It is established that only after a period of four or five years did a serious doubt arise in the minds of the spouses concerning the validity of the marriage. This is deduced from the testimonies of the spouses and witnesses, who testify that such a doubt arose only around the year 1875 or 1870.

14. It is established that the woman, upon learning of the nullity of the marriage, immediately separated herself from the husband. This is proven by the testimonies of the woman herself, who states that she ceased cohabitation from the year 1875 or 1876, and by the testimonies of witnesses who state the same cessation of cohabitation from the year 1875.

15. It is established that the spouses never renewed their consent, nei-

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ther between themselves, nor before their own parish priest. This is evident from the testimonies of the spouses and witnesses, who almost unanimously testify that the husband did everything in his power to have the consent of his wife renewed before his own parish priest and the required witnesses; but that the woman steadfastly refused.

16. It is established that the spouses never requested a dispensation from the root cause from the Apostolic See.

17. It is established that the woman instituted a legal action for the nullity of the marriage. This is clearly proven by the firm will of the woman to seek a declaration of nullity, which she manifested to the judge of Paris, as well as by the final judgment of the judge himself, in which the nullity of the marriage is declared.

18. It is established that the woman is not led to seek a declaration of nullity of her marriage, except because she desires to contract another marriage.

19. It is established that the reunion of the spouses is impossible. Indeed.

[*Latin ed. p. 74*]

74. In the matter of marriage, a woman questioned regarding the reasons prompting her to seek a declaration of nullity, responded: the complete lack of respect, the violence of the Prince towards her and her children; his affected impiety; his choice of a tutor for her son, belonging to a certain international organization, all of which caused her to constantly fear his violence. She also added: the contempt with which she is treated by the Prince, due to his abuse of her trust, would never allow this union to be restored within the Church. All of these things are, in almost every detail, confirmed by the aforementioned witnesses, among whom D. Henszel testified that he made every effort to bring the spouses to an agreement and a renewal of their consent; but in vain, because the woman steadfastly refused. The testimony of the Prince is not dissimilar. 20. It must be affirmed that there was no collusion between the spouses in order to obtain a declaration of nullity. This is deduced from the unanimous testimony of the spouses and the witnesses, who unanimously declare that the Prince, on the contrary, earnestly desired the validity of the marriage, while the woman desired the declaration of nullity. Therefore, the advocate concludes, from the testimonies of the spouses, the priest who celebrated the marriage, the young woman who was the sole witness to the mother, and all the witnesses presented, it is clearly evident that this marriage was contracted without the knowledge of the proper parish priest and without at least two witnesses, and therefore there is no room for doubt regarding its nullity. It is even more strongly to be held that this is the case, if one considers the qualities that adorn this woman in the most beautiful way. For, as testified by the Judge of the *Parisiensi* court and others, she is a Christian woman, descended from a noble family, endowed with a most

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excellent education, worthy of esteem and veneration, and constantly devoted to piety and Christian charity towards the poor. Indeed, to a woman of such proven conscience, who swears that she contracted the clandestine marriage in good faith, all credence must be given, especially when the other spouse and all the witnesses presented agree unanimously on this point, as the Doctors teach, and as the Sacred Congregation of the Council held in January, in the matter of a marriage dispensation, on April 27, 1844, § *Frustra*. Therefore, the marriage, concerning which we are speaking, was, truly and properly, in the sense of the Church,

[*Latin ed. p. 75*]

MATRIMONII 75, it is gathered by the defender that it was clandestine, and therefore, by its own law, it is null and void. However, the advocate continues, the child born in this manner, considered legitimate by the spouses as if the marriage were validly begun, is, by the disposition of the law, legitimate. Indeed, by the disposition of the law, those children are considered legitimate who are born from carnal union; but those who are born from just marriages, or from a marriage putatively just, with the good faith of both spouses, or even of one of them, are to be considered legitimate, for the sake of the children. This is clear from chapter 2, which explains who are the legitimate children, and it is taught by Reiffenst. in the same work, title number 5; Schmalz, *Generalis Historia*, title number 16; and De Luca, *De Dote*, discussion 145, number 113. But when, in a case, the spouses have entered into marriage in good faith before a Presbyter, who, in the name of the Church, blessed their marriage, there is no doubt about the legitimacy of the child, he says. He infers that the Prince was in good faith from the fact that he testified that he judged the Priest to know the principal foundations of ecclesiastical law. But whatever may be the case regarding the Prince's good faith, there is no doubt, and no one has ever doubted the good faith of the Countess: and this is quite sufficient, by the disposition of the law, to declare the child legitimate; otherwise, it would be, as it were, a monster, partly legitimate and partly illegitimate; which cannot be conceived, as is explained by Schmalz, in the aforementioned place. Furthermore, the Prince wished the child to be considered legitimate, and for that reason, he often insisted that the woman renew her consent. Therefore, the advocate concludes, there can be no doubt about the legitimacy of this child.

OBSERVATIONS OF THE DEFENDER REGARDING THE SACRED BOND. He contends that the defender did nothing before the court in Parisiensem to maintain the validity of the marriage; and afterwards, he divides his observations into three sections: in the first, regarding the procedural acts; in the second, regarding the certainty of the facts; and finally, in the third, regarding the disposition of the law. Turning, therefore, to the first section of the advocate's argument, he maintains that

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certain things are lacking in the procedural acts, which he contends are undoubtedly necessary to establish the truth. Of the entire matter...

[*Latin ed. p. 76*]

76. It is held that the essential element of marriage must be found in the manner of acting of the Priest H., who is either to be considered sacrilegious or deceitful. Indeed, he did bless the marriage, he left the spouses in good faith, and yet he declared the marriage itself null, due to a lack of jurisdiction. Regarding the morals of the aforementioned Priest, concerning which a more thorough investigation was certainly necessary in this case, no word is taken into account in the process, since he only states that he had been exiled from his homeland and had established his residence in Paris, in the parish of Saint Philip. Neither the Archbishop, nor the General Vicar, nor the parish priest of Germani, in whose parish the groom resided, were questioned about whether or not they had granted permission to the aforementioned Priest, which he now denies having received; nor, finally, was any inquiry made of the witnesses brought before the court, as to how they knew this; since a hidden fact was being dealt with, which could only be known from the Priest's own confession. But above all, the accuser laments a more serious defect in the omission of hearing the witnesses, who are bound by the bond of marriage, and who were even present at the very celebration of the marriage by the priest himself. He holds that such an omission cannot be excused in any way; since the Priest himself confesses that these witnesses were present at the celebration of the marriage, and then, lest he fall into contradiction, he asserts that these witnesses were aware of the fraud, and that they approved of it. Finally, he observes that the woman presented a letter to the judge, written to her in the year 1878 by Priest H., and that the priest, when questioned, replied, "I wrote this letter in order to avert an accusation, in which it was said that I had intended to deprive the Countess of her fortune, with the favor of the Prince." From this response, it is argued, a suspicion arises of collusion between the woman and the Priest, or at least, considering the complaints of the woman, that the Priest shamefully lied. Furthermore, he complains that not even a copy of the letters, which could shed the greatest light on the matter, is to be found in the records. Therefore, from these omissions, he concludes that not everything is made clear; and he concludes that the judgment should be rendered by the S. C. to ensure that the procedural acts are completed.

[*Latin ed. p. 77*]

MATRIMONII 77 Proceeding then to the second point, the defender of marriage maintains that the certainty of the celebrated marriage is established, first, by the authentic act of the celebration itself, performed by a priest who employed all the rites of the Church; second, by the fact of the spouses, who, from the day of their marriage, have exercised the rights of

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marriage, and who have taken care to have their legitimate child baptized and registered; and finally, by the fact of the priest himself, who, besides the testimony given to protect the reputation of the spouses, performed the role of godfather in the baptism of the child. Therefore, unless the contrary is proven, this act must remain valid in its full force, according to the well-established rule of law: any act is legally valid in its external form, unless otherwise clearly demonstrated. However, there are no clear proofs to the contrary. Since it is unlikely that a priest would have proceeded to bless a marriage without any authorization, when he should have known that a clandestine marriage, as promulgated by the Council of Trent, is not only illicit, but also null and void, and is subject to a grave prohibition. Under these circumstances, according to those who treat of criminal law, it is not easily admitted that a grave crime has been committed, unless there is a strong and sufficient motive; and since such a motive was present in the priest, it must be said that he was acting out of weakness and ignorance. But even this is excluded by the testimony of the Prince, who declares the priest to be worthy of esteem, and to know the fundamental principles of ecclesiastical law. Therefore, since it cannot be established that this action was due to corruption, or fear, or ignorance, or weakness alone, it is concluded that it is unlikely that it was committed by the aforementioned priest, and therefore, the nullity of the marriage cannot be established on such a flimsy and weak foundation. Furthermore, the sworn confession of the priest himself, that he intervened in the marriage without the license of the parish priest and ordinary, is not valid. For if there is a reason for the priest to lie, this confession must not be taken into account, since the priest knows the complaints of the woman against the man and against himself.

[*Latin ed. p. 78*]

78. MARRIAGES. The priest was accused of having celebrated this marriage to the advantage of the man and to the detriment of the woman. Therefore, he wrote to the woman, indicating the means by which she could recover her freedom. He suppressed the woman's complaints, lest they cause damage, and declared that the marriage contracted was null, due to the lack of jurisdiction, which he himself declared; therefore, it was said that he had a reason to lie, when, on the contrary, no other reason appeared for him to knowingly celebrate a sacrilegious marriage. Thus, in order that this sacrilegious crime may be revealed, it remains to be attributed to him, whose evident cause appeared. It is less fitting, however, for the priest's assertion to be confirmed by the testimony of witnesses, to whom the woman's defender appealed. Indeed, from among them, most responded that they did not know this, one or two said that they believed it, but only two positively denied it, and it is not known from whence these men obtained this knowledge, since we are dealing with a fact, or rather, with the omission of an act, which was known only to one priest, and concerning which he maintained

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a profound silence. Finally, the woman's defender, as if fleeing to the last plank of a shipwreck, continues, and seeks to refute the assertion of the couple, together with the servant, regarding the nullity of the marriage, due to the lack of witnesses in the celebration. This would be a serious matter, says the defender of the marriage. But what? Since in the document written with the priest's own hand, the witnesses are named and signed; and there is no reason to the contrary, because they were not invited to testify, since they are still alive. If the witnesses did not see the marriage, this could have been arranged by the priest, so that he might consult the Prince, lest the marriage be annulled: this hypothesis, although one may wish to exclude it, is true, if we consider the testimony of those present; however, if this is the case, the assertion of the couple and the servant would be true, not true objectively, but true subjectively. Finally, descending to the third point of his argument, the defender briefly addresses the sacramental acts, for which the jurisdiction of the Church is required, and argues that the Church should supplement this, if there is good faith on the part of the spouses, as Tradition teaches in *De Matrimonio*, book 5, chapter 20: and he demonstrates that this was more fully present, based on arguments derived from the facts.

[*Latin ed. p. 79*]

MATRIMONII 79. Indeed, the ecclesiastical law admits of a dispensation, which the Council of Trent itself does not exclude, so that when one cannot go to his own parish priest, it suffices to contract marriage before two witnesses and any priest; this is confirmed by the teaching of Gury on Matrimony, number 483, and by the response of the Sacred Congregation of April 22, 1795, approved by Pius VI. However, the fear that increased the bridegroom's anxiety was the case in which recourse to the proper parish priest was prohibited. Once these circumstances are admitted, the difficulty regarding the lack of witnesses is entirely removed; for certainly one of the spouses was a servant, and the other was the priest himself, who, as parish priest, was no longer performing his office in that case. With these premises, the intention was to resolve the doubt: Whether the judgment should be confirmed or whether the decision of the Archdiocesan Court in the case in Paris should be overturned. RESOLUTION. The Sacred Congregation of the Council, after discussing the matter on December 11, 1880, decided to respond: Provided that the legitimacy of the born child remains, the judgment should be confirmed. After a new hearing was requested by the defender of the marriage, the case was again discussed on April 9, 1881, under this doubt: Whether one should adhere to or depart from the decisions in the case. - And the response was - To adhere to the decisions. FROM WHICH IT IS UNDERSTOOD: I. That when the Council of Trent was published, no marriages, which were begun without the proper parish priest, or priest of the parish, or without the license of the Ordinary, and

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without at least two witnesses, should be declared null and void. II. That the proper parish priest cannot be considered present whenever there is a lack of domicile, or quasi-domicile, of the contracting parties.

[*Latin ed. p. 80*]

80. OF MARRIAGES. In this matter, all these things were lacking, as it is established by the sworn and unanimous testimony of the spouses, the priest who officiated at the marriage, and other witnesses.

V. Regarding the legitimacy of the children born from an invalid marriage, there should be no doubt, whenever faith was present, at least on the part of one of the contracting parties (1).

(1) See Vol. XII, page 422. INTERPRETATION OF THE DECREE (1) On August 14, 1880. SUMMARY OF THE CASE. Petrus Nicolaus, a Canon of the Cathedral Church, suffering from deafness and other infirmities, and being nearly eighty years old, after a commendable service of 31 years as a Parish Priest, and 20 years as a Canon, on May 20, 1879, with the willing and joyful consent of the Most Reverend Bishop and the Chapter of the Cathedral Church, obtained from the Sacred Congregation an indulgence granting dispensation from choral service for three years, with the loss of distributions among the present members only. However, a disagreement arose concerning the interpretation of this decree between the Indulgentiary and the Chapter, since the Canons contended that, notwithstanding the indulgence, Petrus Nicolaus was still obligated to perform weekly duties, as well as to celebrate all the conventual Masses, for which each member of the Chapter is required to take turns; he, on the other hand, considered himself completely exempt from such obligations.

(See Vol. VI, pages 414 and 421, Appendix VIII.)

[*Latin ed. p. 81*]

INTERPRETATIONIS RESCRIPTI 81: Because of a controversy, he presented the matter to the Sacred Congregation of Clerics, asking whether he could be compelled to celebrate, either by himself or by others, conventual Masses, and other Masses to be celebrated on feast days and vigils, within the aforementioned three-year period.

A SYNOPTIC DISCUSSION.

RIGHTS OF INDULGENCE.

Firstly, it is established that indulgences for absence from the service of the choir, for days and hours due to duties, or for a certain time, due to infirmity, are commonly granted by the Sacred Congregation. However, this indulgence for absence, in order that it may fully bear its fruits, must be accompanied by the ordinary distributions, as prescribed by Boniface VIII

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in chapter one, concerning Clerics, paragraph 6; where the Pontiff, after forbidding clerics who reside but do not participate in divine offices, states that those who are excused by infirmity, or by a just and reasonable bodily necessity, or by evident benefit to the Church, are exempt from this censure.

This just and reasonable bodily necessity must, above all, be valid when, after being recognized by the judgment of the highest Sacred See, it has been considered a sufficient cause for granting the indulgence. Therefore, it is not surprising that the Sacred Congregation has consistently judged in this manner, as in Viterbo, August 26, 1628; in Rome, May 13, 1651; in Rome, April 19, 1692; in Liège, in the *Iurium Parochialium*, April 19, 1704; and in Mantua, in the *Iubilationis*, March 16, 1737.

Furthermore, it follows that the one granted the indulgence receives the emoluments of anniversaries that occur during the year, unless otherwise expressly stipulated, as in Novara, in the *Iubilationis*, November 19, 1781, and in Lünen, Sarzana, in the *Iubilationis*, April 30, 1684.

Nevertheless, he is exempt from all canonical burdens and functions, so that he is not obligated, either by himself or by another, to fulfill them, as the Sacred Congregation specifically responded in Aquapendente, in the *Iubilationis*, March 23, 1697, and in Siena, in the *Celebrationis et Applicationis Missae Conventualis*, May 12, 1759; indeed, he is not even obligated to reside, as stated in the Acts, Volume XIV, page CLVII, paragraph 96.

[*Latin ed. p. 82*]

82. The interpretation of the decree is to be understood as in the case of St. Angel in Vado, April 15, 1690; in the Jubilee of Patavina, June 9, 1714; and in the doubts regarding Jubilees, December 17, 1718, concerning 5 doubts. From this, it must be concluded that Canon Petrus Nicolaus, within the three-year period of the Indult, is not obligated to perform the hebdomadary duties, nor to celebrate the conventual Masses, either on weekdays or vigils, either personally or through another; and nevertheless, he may receive the ordinary distributions. It does not impede this that two other Canons of the same Cathedral Church are not exempted from such duties; for the judgment concerning the Jubilee Indult is different from the judgment concerning a temporary exemption. Regarding the Jubilee Indult, the common norms are to be followed; but regarding a particular, temporary exemption, consideration must be given to the clauses added by the Sacred Congregation. It is not permissible to object based on custom, since that custom is so recent, having begun only in the year 1872.

RIGHTS OF THE CHAPTER. On the other hand, the Chapter contends that a Canon holding an Indult, during the three-year period of the Indult, is obligated, either personally or through another, to perform the hebdomadary duties, as well as to celebrate the conventual Masses, on weekdays and vigils, for which each member of the Chapter is obligated; and that he may only receive the distributions that are derived from his

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own endowment or benefice, and not those that come from the offerings of others, or from anniversaries and other foundations, unless a choir is present. To prove this, it recalls that the Jubilee is not of common right, but was introduced by the particular statutes of certain Churches, which, according to Benedict XIV, *Inst. Eccl.* 107, n. 64, Gregory XIV did not consider to be disapproved. Therefore, the rights and obligations of a Canon holding an Indult are determined by the constitutions and custom of each Church. Although the constitutions of the Church of P. do not prescribe anything regarding this matter, it is nevertheless customary that two Canons, who have obtained the Jubilee Indult both from the Chapter and from the Bishop, are obligated, either personally or through others, to perform the hebdomadary duties and all the conventual Masses, and that one of those who survive is still obligated.

[*Latin ed. p. 83*]

INTERPRETATIONIS RESCRIPTI 83, and being of an age exceeding eighty years. Therefore, he concludes, even Canon Petrus should be subject to the same obligations. Furthermore, he adds, the conclusion is stronger because it concerns a Canon, not a simply exempt individual for three years, who is considered infirm and, therefore, should only enjoy the same benefits, which are granted by law. However, if the infirm individual is obligated to attend weekly services and Masses, either personally or through another, then Canon Petrus does not seem to be relieved of such an obligation.

Having established this, he distinguishes two types of obligations inherent in Canonries of the Church: one type directly and intrinsically affects the provision of benefits, and if someone is exempted from this, not only would the labor be lessened, but also a financial burden would be added to the other Canons; the other type imposes only a light personal burden. To the first type belong the weekly services and Masses that are celebrated in turn by all Canons; to the second type belong certain other services that are imposed upon the Canons either by law or by the particular statutes of the Church.

Indeed, although Canon Petrus may be considered exempt from the obligations of the second type by virtue of the obtained rescript, he does not seem to be released from the first, otherwise the labor of the other Canons would increase, and their income and revenues would diminish. It must be known that in the Cathedral Church, there is no common Mass, nor any special revenues from which a stipend for conventual Masses and other services distributed in turn is deducted, but each Canon celebrates and applies these at his own expense, or with his own money. Therefore, if Canon Petrus, by virtue of the obtained indulgence, were to evade the aforementioned obligations, and nevertheless received the ordinary distributions, it would follow that he alone would experience a benefit, while the others

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would experience only a disadvantage, since they would be obligated to fulfill his and his own obligations.

Hence, he concludes that the privilege obtained from the Indulgences, as it were, should be strictly interpreted, and that Canon Petrus should be obligated to fulfill the aforementioned obligations, either personally or through another.

[*Latin ed. p. 84*]

84. UPON EXAMINATION OF THE WRITTEN SUBMISSION: After careful consideration by the Eminent and Reverend Fathers, the matter concerning whether Canon Petrus, within the three-year period of the granted indulgence, is obligated, either by himself or through another, to perform the hebdomadary duties, and also to celebrate the conventual Masses, either on weekdays or vigils, was referred for judgment.

RESOLUTION: The Holy Congregation, after deliberation on August 1, 1880, decided to respond as follows: Negatively, concerning the hebdomadary duties. Affirmatively, concerning the celebration of the Masses.

FROM ALL OF THE ABOVE, THE FOLLOWING MAY BE GATHERED:

I. From Benedict XIV, in the Synod of the Diocese, Book I, Chapter 13, paragraph 9, number 15, it is clear that one who possesses the right to enjoy all the benefits of a benefice is not obligated to attend the choir, nor to reside in the place where he obtained the choral benefice.

II. However, the indulgence of exemption from choir duties is granted as a reward for forty years of choral service, diligently performed; and with the cessation of that service, the reason for this remuneration ceases.

III. Such an indulgence, when granted, renders the recipient exempt from all canonical burdens and functions; so that he is not obligated, either by himself or through another person, to fulfill these obligations (1).

IV. However, certain special circumstances may sometimes arise, such that the indulgence does not have the full effect of remuneration, and may be subject to certain limitations.

V. Therefore, although the recipient is exempted from the hebdomadary duties, he is obligated to celebrate the conventual Masses, on weekdays and vigils, because, in the absence of the common Mass for the alms of the Masses, anyone may apply his own resources.

(1) The Holy Congregation, concerning the Indulgence of Exemption from Choir Duties, on March 23, 1696, responded that the recipient is not obligated to attend the conventual Mass; and in Civita Castellana, on November 29, 1776, it was decided that he is not obligated to perform the

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hebdomadary duty, just as with other canons.

[*Latin ed. p. 85*]

85 FROM DECREE 8 OF THE CONGREGATION FOR BISHOPS AND REGULAR CANONS CONCERNING THE RESERVATION OF PENSIONS AND THE APOSTOLIC BENEDICTION, dated December 17, 1880. In the year 1869, the parish of Saint Michael the Archangel in the town of R. became vacant. The municipality of B., to which the right of nominating the parish priest belongs, announced a competition. And in the publicly announced competition, it stipulated that the parish priest to be elected, in addition to other duties, would be subject to the obligation of paying annual installments of 300, divided into equal parts: one part, that is, 150, to be assigned to the maintenance of a poor young man studying, and the other part, or the remaining 150, to be assigned to a chaplain who would celebrate Mass on feast days in the Church of Saint Mary of the Angels. With these obligations established, the priest Joseph obtained the parish, having been aware of the obligation to pay the pension, and he promised, willing and eager, to fulfill its payment. However, it is only with the Apostolic Benediction that such obligations can be imposed on parishes. The Bishop E., to whom the town of R. is subject, in the canonical acts of institution of Joseph, expressly cautioned: "It will be our concern, whenever [the matter] comes before the Pontiff, who possesses the power of private dispensation, to implore [him] regarding the annual pension of the parish."

[*Latin ed. p. 86*]

86 CONCERNING THE RESERVATION OF A PENSION: It was publicly made known by the Municipality itself, in accordance with what We have approved, and with Pontifical approval, that three hundred livres, equally divisible, were to be reserved, to those who were deemed to attend the aforementioned parish. Whether the approval of which the Bishop spoke was ever obtained from the Pontiff, at least verbally, was not certain, for there were no documents in the Curia. It is certain that a poor young man from the town of R entered the Seminary in the year 1870; and that the parish priest, Joseph, received a six-month pension on December 20, 1812. Subsequently, when the pension was requested several times by the directors of the Seminary, the parish priest objected, sometimes citing the lack of Apostolic approval, and at other times, the inadequacy of the parochial revenues, which were not sufficient for his proper support. Therefore, the directors of the Seminary appealed to the Sacred Congregation for Extraordinary Affairs and to the Royal Congregation, requesting that a Pontifical decree confirm the pension, which perhaps was verbally approved by His Holiness, Pope Pius IX; 2° to decide: whether, supposing that the grace is granted by the Pontiff, given the circumstances as they have been narrated,

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the unpaid pensions should be paid, and in what amount the payment should take place. After obtaining information from the Ordinary and after all other matters customary to such cases had been completed, the case was presented before the full Congregation.

DISCUSSION OF THE ARGUMENTS PRESENTED BY THE DIRECTORS OF THE SEMINARY: They asserted, without a doubt, that the parish priest, Joseph, had undertaken the obligation to pay an annual pension of three hundred livres when he took possession of the parish. This, they said, was made known to all by the Municipality of R, in the very invitation to the assembly. Therefore, it is also certain that Joseph is bound to pay the pension, which constitutes an obligation that he assumed continuously from the moment he was installed in the parish. He cannot validly object to the inadequacy of the parochial revenues, because he had not suffered any diminution of revenues.

[*Latin ed. p. 87*]

CONCERNING THE RESERVATION OF A PENSION: On the day that he obtained the parish, he reserved 87 livres, and therefore the reason for the assumed obligation arises from the fact that his predecessor, with the same revenues, accomplished more, and did not leave a meager estate when he died. The question of law concerning the lack of an Apostolic Beneplacitum remains. However, one can observe concerning this question. The concession of the Beneplacitum is to be presumed in this case: since all things suggest that the Bishop, who did not fear the necessity of the Beneplacitum, and who had entrusted the matter to execution, placed a young cleric in the seminary, to be maintained by a pension of 150 livres paid by the parish priest, having presumably obtained the Beneplacitum from the Pope. According to the common opinion of canonists, pronouncements of the living voice are concessions of privileges or graces made by the supreme prince, e.g., the Supreme Pontiff, solely by word, or orally, without writing. Such pronouncements are divided into authentic and non-authentic. Ferraris, Bibliotheca Canonica, under the word "oracula," No. 3. Neither is a writing required for the essence and substance of a privilege: but even an oral pronouncement, or a pronouncement of the living voice, conceded, is valid. Cap. si quis, De Clericis, Decree, cause 1, question 4, and Extravagans Etsi Dominici de poenit. et remissione. However, the efficacy of such pronouncements is limited only to the internal forum, since in the external forum at least testimonial proof is required, according to the prescription of Julius III, ibid., and Reg. 52 of the Chancery. However, also, the Supreme Pontiff Gregory XV, in the constitution which begins "Romanus Pontifex," revoked all graces, privileges, indulgences, and pronouncements made by the living voice, except those granted in response to the supplications of Kings, and also those confirmed by Cardinals. Nevertheless, Urban VIII, in

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the constitution "Alias felicis recordationis," did not wish to give credence to officials and ministers who, in the exercise of their offices or functions, deal with the Pope concerning concessions and dispositions made by the Pope, and in the execution of Pontifical mandates and orders, and in other matters conducted with the same Pope.

[*Latin ed. p. 88*]

88 CONCERNING THE RESERVATION OF A PENSION, it is understood to pertain to those matters which belong to the office or duty of any of them. Furthermore, it cannot be presumed that the Ordinary, without Apostolic Approval, to which necessity he himself had declared in the aforementioned Bull, ordered the reservation of the pension above the parochial benefice, which was subject to tithes, contrary to the established practice of the Most Reverend Lord Trombetta, as set forth in *Praxeos Reg.*, Chapter V, concerning Apostolic Approvals, in accordance with the constitutions of Innocent XII, November 11, 1692, and Benedict XIII, which begin with the words *Quanta cura*. The ecclesiastical pensions are not to burden the people. Nevertheless, even with all of this admitted, the parish priest is equally bound to pay the pension, since he accepted it. Indeed, he who contracts with the reservation of Apostolic Approval is bound; so has been decided by the Rota before Olivario, decisions 607 and 49, title 6. Therefore, from the day that the student began to reside in the Seminary, he is bound to pay the annual sum of 150. However, for caution's sake, explicit Apostolic Approval can be sought, which would establish that the obligation of the parish priest should be enforceable from the day that it was accepted. For the parish priest has, from the beginning, carried with him the condition that, if the Pope grants a dispensation, the condition would be fulfilled. However, the effect of a condition is to be drawn back to the time of the contract; thus, *Vinnius, Institutes*, Book III, title 16, paragraph 4. A condition existing is drawn back to the time of the contract: that is to say, when a condition once exists, it is considered as if the obligation had been contracted from the beginning, without a condition, *L. 11 ff.*; *Qui potiores in pignore, § 1*; *Paulus ad L. S ff. de periculo et commodo rei venditae*. Nor can it be taught differently by experts in ecclesiastical law, that a contract can be made, and also a benefice resigned, under a condition related to what has been stated above. Final chapter, concerning "pactis," and the chapter concerning "Quaesitum de rerum per mut."

WHAT PARISH PRIEST JOSEPH OBJECTED. The parish priest, beginning his argument in the opposite sense, observed that in law, there is the faculty of imposing pensions on ecclesiastical benefices, which pertains to the Holy See. Thus, Saint Innocent III, by a special edict, prescribed this,

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and his prescriptions were confirmed.

[*Latin ed. p. 89*]

CONCERNING THE RESERVATION OF A PENSION: Benedict, in Mass, the Fourteenth, in the constitution which begins "Quanta pastoribus," has stated that the Ordinary having seen that the final day had arrived, Apostolic approval was required. This fact demonstrates that he wished to abstain from imposing the pension for two reasons: 1. because the Municipality wished to withdraw from the agreement, 2. because, due to the demand for the pension before the granting of grace, the reservation was rendered null. This can be understood from the very formula of the Apostolic Letters, which states: "in order that the Apostolic Letters may be perfected," and therefore, before other things are present, the reservation is not valid by its own right. It must not be argued that the obligation of the parish priest is firm, because he undertook it together with the parish. Two things can exclude this obligation: 1. error concerning the revenues of the parish, of which the permanence became apparent later, when he acquired possession of the parish; 2. because the parish priest gave his consent to the imposition of the pension for legal proceedings. Indeed, when the imposition does not take place through legal proceedings, the consent and the obligation derived from it vanish. Regarding unpaid pensions, the restitution of these is strictly opposed, and indeed, a claim for the recovery of the portions already paid is protested. With these things having been explained, the following points are to be clarified: Questions. I. Whether and how pensions imposed through parish benefices are maintained in this case. And to the extent that it is affirmative. II. Whether and how there is a place for the restitution of pensions already paid in this case.

RESOLUTION. The Most Reverend Fathers of the Congregation, assembled in general session on December 17, 1880, judged that the following should be answered: To I. Affirmative, provided that the words "SSmo."

[*Latin ed. p. 90*]

90 To the Minor Canon: I shall endeavor, WITH THE RESERVATION OF THE PENSION. Regarding one part of the pension, I affirm; regarding the other part, I proceed with the understanding that it is done with the approval of the Most Holy Father. From THIS, the following are gathered: I. The obligation undertaken by the parish priest in accepting the benefice remains valid, with the reservation of Apostolic approval. II. The opinion prevails that contracts entered into with the reservation of Apostolic approval are generally valid in themselves, provided that possession has not been formally transferred. III. Apostolic approval can also be obtained verbally, and such an oracle, once granted, remains valid in law. IV. Even if there is no written testimony of the granted oracle, yet, sometimes, as in this case, considering the dignity and learning of the one who executed the

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contract, it can be presumed that the grace which he had promised to obtain through a verbal oracle was indeed obtained. V. However, once the parish priest has undertaken the obligation, for the sake of caution, an explicit Apostolic decree is requested, exempting him from the execution of said obligation from the day on which he was invested with the possession of the benefice; with the condition that, if the Pope grants a dispensation, the contract is suspended for the time being. VI. Therefore, while in the case of the pension of S. O., the imposition of the obligations was confirmed, a clause was added, stating that it was done with the understanding of the Most Holy Father. However, once the imposition of the pension was established, it was stipulated that only with grace, and with the understanding of the Most Holy Father, could a portion of the pension be remitted.

[*Latin ed. p. 91*]

91. DECREE: By which it is declared and established that Regular Canons and students of Congregations taking simple vows, expelled from their monasteries in France, are to be subject to the Ordinaries in whose dioceses they reside, even in the performance of sacred duties, and especially in the exercise of the care of souls. Since the Regular Orders and pious institutions have suffered great harm in France, and have rendered such great service to the Christian cause and to civil society, especially in these troubled times, this Congregation, entrusted with the affairs and consultations of Bishops and Regular Canons, has not neglected, by express Apostolic authority, to provide the General Superiors with necessary and opportune instructions. Indeed, it has been deemed fitting to extend, with greater force, to the Religious of that kingdom, those chosen by force from their monasteries, as the Penitentiary already established for the Regular Canons of Italy has decreed: namely, that it is not within their power to place and receive Regular Canons expelled from their own monasteries in other monasteries. However, when Regular Canons, especially due to a lack of accommodations, cannot be placed elsewhere, and when there are serious and just reasons for this, upon which the conscience of the General Superior is heavily burdened, the General Superior, by Apostolic authority, may grant them permission to remain outside the monasteries, under the obedience of the Ordinary of the place, as if secularized for a time and at the will of the Holy See and of the Superior himself, in their religious habit, and, insofar as necessity requires, in the habit of a secular priest, with regard to priests, and in a modest, lay habit, with regard to laypersons or converts, always retaining some internal sign of their religious habit, and preserving, as far as possible, the essential elements of their vows, and relaxing the rules which are not compatible with their new condition. Since many of these Religious living outside the monasteries can offer a helpful hand to the Ordinaries in the care of souls, it has seemed fitting that, meanwhile, as long as the circumstances permit, they should

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obey the commands of the Ordinaries under whose obedience they live, both in matters pertaining to the sacred ministry, and especially in matters pertaining to the care of souls.

[*Latin ed. p. 92*]

92 DECREE: Whereas the Most Holy Lord, Our Pope Leo XIII, to whom a report concerning this matter was made by the undersigned Secretary of the aforementioned Sacred Congregation in an audience on July 29th of the current year, 1881, having considered all the circumstances, judged it fitting to declare and establish, as is declared and established by the tenor of the present Decree, that the Regular clergy in France, expelled from their monasteries and placed under the authority of the Ordinaries, as if secularized, shall, during the present circumstances, be entirely subject to the same Ordinaries in whose dioceses they reside, even in the performance of the sacred ministry, and especially in the exercise of the care of souls, and that His Holiness intended that this should also apply to the students of pious Institutes or Congregations of simple vows, who are in the same condition of the aforementioned Regular clergy due to the suppression [of their orders], notwithstanding any Apostolic Constitutions or those of their own Order or Institute, or any other documents to the contrary, even those deserving of special and individual mention. Given in Rome, from the Secretariat of the aforementioned Sacred Congregation, on July 30, 1881.

FROM THE HOLY CONGREGATION FOR RITES: Decree by which the suspension of votive tablets, which depict a part of the less honorable part of the human body, is prohibited.

VASTEN, OR THEATINA: The Most Illustrious Reverend Lord, as a brother priest together with the clergy of the Church under the title of the Most Holy Savior, located in the rural area of Casalbordino in this Diocese of Vasten, presented to this Holy Congregation for Rites that in the rural Church of Saint Mary, known for its miracles, the faithful, when attending Mass, are accustomed to suspend votive tablets, made of wax, depicting a part of the human body, which part they claim to have been healed through the intercession of the same Blessed Virgin Mary, as a sign of the graces they have received from the Mother of God, before her altar.

[*Latin ed. p. 93*]

DECREE 93: Since the Most Reverend [Cardinal] has recently ordered that those votive offerings which exhibit a less honorable part of the body (1) be removed from the altar, the aforementioned Parish Priest, although, as he asserts, he has followed this order, nevertheless humbly submits the following questions, expressed in the Italian language, to the Congregation of Rites (2):

I. In many churches, not only in this one, but also in other dioceses,

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such wax votive offerings are observed suspended; are they therefore to be considered as indecent and unsuitable ornaments in the sacred temple?

II. In the case above, that is, when the Bishop has ordered that wax votive offerings should be rejected, and no longer suspended on the wall, behind the altar of the Virgin, how should the Parish Priest and the clergy act, considering the scandal and the complaints of the faithful?

The Sacred Congregation itself, after hearing the written opinion of another of its consultants, having carefully considered the matter, has responded as follows:

To I: Affirmative.

To II: In accordance with this, the Parish Priest himself should instruct the people about the indecency of the aforementioned custom, which is reminiscent of pagan rites, and should encourage the faithful with all diligence to obey willingly and piously the wise order of the Most Reverend. While I signify this resolution and the intention of the Sacred Congregation to the Most Reverend, I earnestly pray that the aforementioned Parish Priest may live a long and happy life, and I implore the blessing of the Most Reverend.

Rome, March 23, 1881.

Your most devoted brother,

D. CARO. BARTOLINIUS.

Placidus R. C.

Prefect.

Rolli S. R. C.

Secretary.

To the Most Illustrious and Reverend Lord, as Brother, the Archbishop of Theate, Administrator of the Diocese of Vasten.

(1) S. Lig. lib. III n. 423.

(2) The Latin version of the two questions:

I. In quamplurimis Ecclesiis, nedum istius, sed et aliarum Dioecesium, suspensa inspiciuntur eiusmodi ex-voto in cera; sunt ergo habenda ceu ornamenta indecentia atque inconvenientia in sacro Templo.

II. In casu supra exposito, idest ex quo Episcopus iussit ex-voto in cera esse respuenda, neque amplius suspendenda in pariete, post altare virginis, quomodo sese habebit Parochus et Clerus propter scandala et reclamationes fidelium?

[*Latin ed. p. 94*]

9. DECREE of Lima concerning Beatification and Canonization of the Venerable Servant of God, Francis Camacho, professed Religious of the

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Order of Saint John of God. SUPERIOR, having considered: "Whether it is established that the Venerable possessed the Theological Virtues of Faith, Hope, and Charity in God and in neighbor, as well as the Cardinal Virtues of Prudence, Justice, Fortitude, and Temperance, and their associated virtues, in a heroic degree, in his life and actions?"

The Venerable Francis Camacho, a member of the Order of Saint John of God, a most faithful exemplar of its founder, was born in the town of Xeres, in the Archdiocese of Hispalensis, in the year of salvation 1629, from honest and pious parents devoted to agriculture. As he grew older, he entered military service; and through the seductive nature of military life, he gradually fell into vices. After his military service ended, he traveled to various regions of Americae, neglecting the care of his soul. At the age of thirty-four, while residing in Lima, he heard the preaching of the Venerable Francis of Castillo, and the hand of the Lord struck him. For God, rich in mercy, cleansed him of his sins in Christ, so that, as the Apostle writes, abundant riches of His grace might be shown. Having been cleansed of the stains of sin through the Sacrament of Penance, he was transformed into a new man. He went into the forum and, before the assembled crowd, cast aside his sword and other military insignia. He was then considered mad, and was severely beaten with stones and a club. Afterwards, he grew more and more fervent in charity towards God, and, following the exhortation of his confessor, he was led to the Monastery of Saint John of God by a prodigious guide. He was gladly received by the brethren, and in the year 1664, he pronounced his solemn vows. He meticulously observed the discipline, and through the remarkable practice of all virtues, he shone as an example to the religious family. With fervent piety, he daily received the Sacraments.

[*Latin ed. p. 95*]

DECREE 95: He spent almost the entire night, bent at the knees, in contemplation of heavenly things, granting himself only a brief respite for sleep, for he always exhibited a marvelous example of the mortification of the flesh: he observed a fast to the middle, having been sustained for twenty years with daily bread, oil, and vinegar, and never without meat; and he scourged himself so cruelly that he bled several times a day. For thirty-five years, he bore the burden of begging, so that the charitable institution which he founded, through his industry at Monteu da Po, might be able to benefit all the sick and all the poor. By this very example of Christian perfection, and by the heavenly gifts with which he was illuminated by God, he acquired a public reputation for holiness, and through the diligent seeking of large sums of money, which he obtained according to the judgment of his Superiors, he built a very large hospital and church, and thus he was able to provide more opportunely for the care of the sick, and to avert many from sin, or from the danger of sin, by providing them with

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assistance. Finally, worn out by the rigor of constant penance and the labors of charity, he lay down, overcome by illness, and with a fervent spirit of humility and piety, he repeatedly received the Sacraments, and for a long time he struggled with death, demonstrating a marvelous patience in the pains of his illness, and while kissing the image of the Crucifix with his dying lips, he surrendered his soul to God most peacefully in the year 1668, at the age of sixty-nine. The fame of his holiness, which he enjoyed during his life, was confirmed and increased after his death; and after an informative process was instituted concerning his virtues, and after it was discussed according to the established procedure, His Holiness, Pope Benedict XIV, on the thirteenth day before the Kalends of October, in the year 1753, signed the commission for the cause with his own hand. Then, all the proceedings were completed according to the apostolic constitutions for the progress of the cause; but well-known events delayed the proposal of the cause until the thirty-third year of this century, in which year the cause was finally discussed for the first time in the preparatory assembly on the fifteenth day before the Kalends of October. In two subsequent preparatory congregations, by pontifical indult, the virtues of the Venerable Servant of God were considered, namely, on the seventeenth day before the Kalends of October in the year 1834, and on the eighth day before the Kalends of May in the year 1877. General Congregations.

[*Latin ed. p. 96*]

On the Kalends of July of the recently elapsed year, before the Most Holy Lord Our Pope Leo XIII in the Apostolic Vatican Palace, a Decree was given. The Most Reverend Cardinal Aloysius Oreglia, Relator of the Cause of Saint Stephen, proposed the following question: "Does it appear that the theological virtues of Faith, Hope, and Charity, in God and in neighbor, and also the cardinal virtues of Prudence, Justice, Fortitude, and Temperance, together with their associated qualities, were present in a heroic degree, in the case and with the effects of which we are considering?" Then, the Most Reverend Cardinals, entrusted with the sacred rites, and the Consultor Fathers, gave their votes in order. After they had been heard, the Most Holy Lord Our Pope, considering the gravity of the matter, encouraged all to constantly implore the spirit of the Divine Counsel from the Father of Lights. Therefore, after repeated prayers in the spirit of warfare to God, especially during these days in which the great mystery of our inheritance has been perfected, He decreed to openly express His considered judgment on this solemn day, on the Sunday after the Circumcision, after the offering of the sacrifice, in the private pontifical chapel, and then, proceeding to the more noble hall, seated on the throne, with the Most Reverend Cardinal Dominic Bartolini, Prefect of the Congregation for Sacred Rites, and the Most Reverend Cardinal Aloysius Oreglia, Relator of the Cause of Saint Stephen, and also with the Reverend Father Lawrence Salvati, Promoter of

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the Faith, and myself, the undersigned Secretary, He solemnly declared: "It appears that the aforementioned Venerable Servant of God, Francis Camacho, possessed the theological virtues of Faith, Hope, and Charity, in God and in neighbor, and also the cardinal virtues of Prudence, Fortitude, and Temperance, together with their associated qualities, in a heroic degree, in the case and with the effects of which we are considering." This Decree was ordered to be recorded in the Acts of the Congregation for Sacred Rites and to be made public on the Kalends of January in the year 1881. D. CARD. BARTOLINIUS, Prefect of the Sacred Rites. *In loco gg Sigilli* Placidus Rulli, Secretary of the Sacred Rites.

[*Latin ed. p. 97*]

97 BY THE DIVINE PROVIDENCE OF OUR MOST HOLY LORD LEO XIII, PAPAL LETTERS, WHEREBY THE EPISCOPAL HIERARCHY IN BOSNIA AND HERZEGOVINA IS ESTABLISHED. LEO, SERVANT OF THE BISHOPS, SERVANT OF GOD, FOR PERPETUAL REMEMBRANCE. From this august Chair of the Prince of the Apostles, in which it has pleased God to place our humility, encompassing all regions of our ministry, we acknowledge that it is our duty to exert every effort to ensure that the Catholic religion, mother and teacher of all right discipline and of all civil humanity, may everywhere receive ever greater growth, and that all peoples may be aided by its guidance and protection to follow the path of human and heavenly happiness. In this ministry, while our mind is affected by the sight and gravity of the evils that oppress human society, by the persistent war by which this holy See is attacked by men hostile to religion, the Most Clement God does not allow suitable consolations of his benevolence to be lacking to us, often granting favorable results to our endeavors for the salvation of souls, and making it favorable that the Catholic faith, in many places severely shaken and attacked, may happily establish its seat, and extend the boundaries of its salutary kingdom. We have received a considerable benefit from this in the illustrious testimonies of filial affection and devoted will, which...

[*Latin ed. p. 98*]

98 APOSTOLIC LETTERS: The people of the Vonic nation, a distinguished part of the Christian family, have publicly demonstrated their grateful affection for us, due to our paternal concern, with which we strive to promote their well-being. From these things, as much as the desire for their salvation moves us, so much also does the magnitude of hope elevate us, with which we are not in doubt that the people of that nation, who have yet to return to Catholic unity, after the sad events which they have long endured, considering the happiness of the days when their ancestors adhered to the Apostolic See, and the blessed condition of their brothers, who, remaining in the faith of the Roman Church, have always found in

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it the protection, comfort, and support of the most loving Mother, will seek refuge in her embrace, and be united with her by the firm bond of faith and charity. In this concern and affection, with which we embrace all the Slavic peoples, we rejoice greatly that the opportunity has been offered to us to provide for the spiritual needs and interests of those who live in the Bosnian and Herzegovinian provinces, which, due to changes in the political situation in those regions, are now held and administered by our most beloved son in Christ, Francis Joseph, Emperor of Austria and King of Hungary. For, considering it opportune for our ministry, we deemed it necessary to bring the affairs of religion in those provinces to a form that would better correspond to the new conditions of the republic, and would be beneficial to those peoples in receiving greater assistance from the Church. Confident in the sincere piety and devotion of the most illustrious Emperor and King, we consulted with Him, so that He would join His efforts with ours, and with a benevolent will would comply with our desires. Our hopes and wishes were realized: the August Emperor and King, to whom the Apostolic title is a spur to present the noble virtues of His ancestors, graciously accepted our requests and desires, and with His favor, we have been granted the opportunity to establish a new ecclesiastical province in that part of Illyria, of whose illustrious memory the Catholic Church will provide a record for posterity. And it is indeed known and confirmed by the monuments of history that the Illyrian provinces, which extended as far as the river Ister, were illuminated from the beginning by the light of the Gospel through the ministry of the Apostle of the Gentiles, who, writing to the Romans and recalling what Christ accomplished through him by word and deed, in the power of signs and wonders, in the power of the Holy Spirit, said that He had gone from Jerusalem through

[*Latin ed. p. 99*]

APOSTOLIC LETTERS 99 filled the entire region, even as far as Illyricum, with the Gospel of Christ (1). Indeed, that minister of Christ was entirely devoted to the service of the nations. Traversing Illyricum, as the ancient Fathers have handed down in their memories (2); and everywhere scattering sparks of faith, which the Holy Spirit aroused, and always preserved alive. When the Doctor of the Gentiles had spread the seed of the divine word in those regions, which were afterwards diligently cultivated by his disciples and by the Prince of the Apostles, Luke (3), Clement (4), and Titus (5), it is astonishing how much the Christian cause advanced, and how much it increased, with an ecclesiastical hierarchy established, in which the episcopal sees of Thessalonica, Salonitana, and Syrmia held the lead, which deservedly boast of having received their first pastors from two Princes of the Apostles. Nor were those regions lacking in the glory of martyrs, nor in illustrious teachers, among whom

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it is fitting to mention that most brilliant light of the Western Church, and an outstanding interpreter of the divine scriptures, Jerome, who received his first enlightenment in the ancient territories of the Pannonians and Dalmatians (6). Moreover, the Roman Pontiffs, our predecessors, never failed to show benevolence, nor to devote any part of their care to the provinces of Illyricum; indeed, in those regions, which look more towards the East, they appointed certain sacred ministers, who presided with the power of the Apostolic See, assisted by the Bishops of Thessalonica, who performed this ministry. Thus, those provinces flourished prosperously, without the constant care of the Roman Pontiffs, as was declared by our great predecessor, Nicholas I, in letters addressed to Emperor Michael, with these words: "The Illyrian diocese, in the times of our predecessors, namely Damasus, Siricius, Innocent, Boniface, Celestine, Sixtus, Leo, Hilary, Simplicius, Felix, and Hormisdas, the holy Pontiffs, was increased by their sacred dispositions" (7). Moreover, these letters exhibit a lasting and illustrious monument of another great predecessor of ours, Gregory I, with supreme authority, and with the utmost solicitude and abundant charity, with which this Roman See (1) Rom. XV. 19. (4) Farlat. Illyric. sacr. tom. I. pro(2) S. Asierius Episc. Amaseae homleg. part. III §. I. v. in Princip. Apost. Cf. s. Hieron. (5) S. Hieron. in cap. IV. epist. II. ep.LIX. ad Marcellam; s. Greg. Nyssen. ad Timoth. orat. de s. Stephano Protoni; Ioana .VIII. (6) Idem de -viris illustri!», cap. «It. ep. CIX ad Petrum Comit; s. Petrus (7) S. Nicol. I PP. epist. IV ad Damian, sermo de ss. Apost. Mich. Imp. (3) S. Epiphan. haeres. LI.

[*Latin ed. p. 100*]

400. Apostolic Letters have customarily been issued to address the needs of pastors and the faithful in various regions, for the edification and growth of the mystical Body of Christ. However, as the power of the Roman Empire waned, and those who held supreme authority were unable to restrain the incursions of foreign peoples from all sides, who spread devastation everywhere, even those regions that had flourished were occupied, first by the Goths and the Huns, and then by the Avars and the Slavs. Consequently, in that sad time of slaughter and destruction, not only were many cities distinguished by their antiquity and size destroyed, but also many of the more important episcopal sees were completely lost. Nevertheless, neither the courage nor the zeal of the Roman Pontiffs failed; they devoted all their efforts to alleviating the damage, to restoring what was ruined, partly by assisting the poor and raising up the fallen, and partly by establishing Christian institutions in those regions, so that from them, like living stones, honorable members of the spiritual house, and noble pupils of Christian humanism, might contribute to the good of civil society. And indeed, in the seventh century, when the Serbs and Croats, having come from the Carpathian Mountains, established their settlements in the regions of

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Slawonien, Croatia, Serfidsche, Dalmatia, and Istria, Pope John IV, while providing resources for the Roman Church to alleviate the suffering of those oppressed by miserable servitude, and while taking care to prepare a place of safe tranquility for the relics of the holy Martyrs, also deemed it necessary to contribute to the salvation of these new peoples, and sent Martin, an Abbot, a most holy man, to them, who would lead them from the darkness of error to the light of the evangelical truth (1). Moreover, there is no doubt that Bishops and priests sent from the city of Rome by the same Pope, and by other successors close to him, initiated all the works of piety among those Slavic peoples who live in the south, and that, along with two princes, Porino and Porga, they received them, cleansed by the bath of regeneration, as the first fruits of related peoples, into the fold of Jesus Christ (2). Furthermore, this solicitude of our Predecessors shone brightly in the following centuries, in which, with the help of the most holy men Cyril and Methodius, German brothers, whose religion and cult we have recently judged worthy of greater preference and promotion to our great joy, the Slavic peoples, from south to north, more fully embraced the light of the evangelical doctrine.

(1) *Liber Pontificalis* in John IV.

(2) Constantine Porphyrogenitus, *De Administrando Imperio*, chapters XXX, XXXI, XXXII.

[*Latin ed. p. 101*]

APOSTOLIC LETTERS 101, and through them, brought about for the benefit of human society and culture, have taken on the form of holy religion and justice (1). Indeed, the Slavic peoples had, in a remarkable way, converted to the Catholic faith, entering into communion of faith and charity with the Apostolic See, and they maintained a close connection with it, bound by the ties of filial devotion, drawing abundantly from that source, from which the unity of the priesthood and the doctrine of salvation flows throughout the world, like from a living fountain of heavenly grace. Moreover, it was the custom among the Slavic kingdoms and principalities, to acknowledge the Most Blessed Peter, whom they revered, in his Successors, as heirs of the power that He Himself received from the Eternal Shepherd for the entire Christian flock. But, after some of those peoples, following the footsteps of Photius, withdrew from the maternal embrace of the Catholic Church, and while We strove in vain to bring them back, they withered, like branches cut off from the vine, and from a flourishing state, they fell into misfortunes and grievous calamities, which history has recorded in its monuments for posterity. Therefore, having been taught by the experience of many centuries, We are entitled to urge these peoples and to address them with the very words that Our Predecessor, John VIII, as if foreknowing future events, used to try to bring them back to Catholic unity. He said: "You must remember how your predecessors prospered so manifestly

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when, with a devout heart, they flocked to the threshold of Peter, the Apostle, the keeper of the keys to the heavenly kingdom, as if to their own sons, and how much adversity you now endure, since you have not hesitated to separate yourselves from that See (2), as if from strangers." The peoples who inhabited the regions of Bosnia and Herzegovina, to which We now extend Our care, have also been subjected to these various vicissitudes. These provinces obeyed various princes of neighboring nations, according as each was more powerful; sometimes they were subject to those who ruled Serbia, and sometimes to other lords. Consequently, they could not escape the fatal shadow of errors that spread around them. When, in the twelfth century, they came under the power of the kings of Hungary, who adopted the name of the Kingdom of Rama, they returned to communion with the Church, and again enjoyed the fruits of a flourishing religion. But this happy state, although pleasing, was not long-lasting: for not long afterwards, from the borders of neighboring Bulgaria (1) John VIII, Ep. 8 to Michael, King of Bulgaria. (2) Epist. CCXXXIV to the Clergy of Salon.

[*Latin ed. p. 102*]

102 APOSTOLIC LETTERS: Another grievous blemish afflicted them, spreading widely, far more virulent and foul than the former, arising from ancient Manichaean errors, which gave its name to the sect of the Patarenes. From this sad deluge, which defiled those regions for almost three centuries, many and pernicious damages accrued to the faith and morals of their people. Nevertheless, in that time of calamity, the zeal and paternal solicitude of the Roman Pontiffs shone brightly, constantly intent on removing the tares from the field of the Lord, protecting and fostering the seeds of the Christian faith, and thus restoring the cultivation of sincere piety. For, as we shall relate, Innocent III, Honorius III, Gregory IX, Innocent IV, Nicholas IV, John XXII, Benedict XII, Urban V, Gregory XI, Eugene IV, and Nicholas V, contributed a most important and outstanding part to their supreme ministry in this matter, partly through frequent legations and apostolic letters sent to Princes and Bishops, partly through sacred expeditions of apostolic men, who, burning with zeal for the salvation of souls, cared for this, and partly through the frequent establishment of houses for them, which were destined to become noble seats of religion and sanctity, accomplishing this: that the corrupted minds of men, who were accustomed to errors and bad morals, would gradually be inclined to submit to the gentle yoke of the evangelical law. The brethren of the religious families of Saint Francis and Saint Dominic deserve a considerable share of the praise for this. From among them, not a few, having been cut off by the heretics, sought a glorious death for the sake of Christ. Moreover, during this time, the Holy See did not fail to bestow various benefits upon those two provinces, especially from the time when the Kingdom of Bosnia was established. Indeed, in the 14th century, with the consent of King Louis

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of Hungary, Stephen Tuartkus, who ruled Bosnia, called *Bannus* in their language, assumed the royal title and dignity, adding to his dominion the principality of Kulmia in the Herzegovinian region, also called the Duchy of Saint Saba. From that time on, the Kings of Bosnia constantly called upon and requested aid from the Roman Pontiffs in the most important and necessary matters of state, and they were never denied counsel, assistance, consolation, or any other service of paternal charity by Our Predecessors. A striking example of this is the illustrious Queen Catherine of Bosnia, who, when her homeland was in ruins, found refuge in this blessed city, Asylum, and received a fitting honor from Our Predecessors, and who, approaching death, in the final clauses of her will, in which she appointed the Roman See as the heir to the Bosnian kingdom, expressed her gratitude.

[*Latin ed. p. 103*]

APOSTOLIC LETTERS 103: It was deemed fitting to clearly commemorate the kindness and generosity bestowed upon him by the Supreme Pontiffs Pius II and Sixtus IV (1). But among the diligent cares which the Apostolic See extended to Bosnia, it is especially worthy of remembrance that study, which several Roman Pontiffs have undertaken, to establish ecclesiastical hierarchy in that region, namely by increasing both the number of dioceses and the number of sacred ministers, as circumstances and the more useful administration of sacred affairs among the Bosnians seemed to require. Indeed, undeniable evidence testifies that after the Slavic peoples, who inhabited the southern part of that region, embraced the faith of the Catholic religion, sacred affairs in that vast region were administered for a long time under the governance of only one Bishop, who, for the public good of those places, was subject to the metropolitan jurisdiction of the See of Salonica or Spalato, then Dioclea or Antivari, and sometimes Ragusa, and occasionally Kollotschau, as a suffragan (2). When this was the state of sacred affairs in Bosnia, Our Predecessor Innocent III, who, at the beginning of the 13th century, inflamed with zeal for religious matters in that kingdom, sent John de Casemario, his own and the Apostolic See's Legate, thither, and from his letters, he learned that the condition of religion within the borders of the Bosnians required that the number of episcopal sees be entirely increased. "You must know," thus wrote the Legate, "that in the kingdom of... Bosnia, there is only one bishopric, and the bishop has recently died. If it could be done that someone of Latin origin would be appointed there, and if three or four new ones could be created there, a considerable benefit would be added to the ecclesiastical situation, because the kingdom is at least ten, and more, days' journey in extent" (3). Although it was not given to that Pontiff to bring about the desired outcome, as he wished, Gregory IX, who succeeded Honorius III in the Pontificate, with zeal for the preservation and propagation of the faith in those parts, undertook the task of implementing and perfecting it,

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and in the year 1233, he sent letters to James, Cardinal Bishop of Praeneste, the Apostolic See's Legate in Pannonia, and entrusted to his faith and prudence the task of establishing new episcopal sees in Bosnia, and that bishops should be chosen who shone with solid knowledge and piety (4). Although the zeal of this Pontiff also did not achieve the desired outcome, nevertheless, he...

(1) Assemanni kal. Eccl. univ. tom. v, part. I cap. III pag. 96.

(2) Pariat Illyr. sac. tom. IV, p. 37 seqq.

(3) Innoc. III lib. VI, ep. CXL Iolian. de Casemario ad Pont.

(4) Regest. Gregor. IX, lib. VII ep. CLXIV.

[*Latin ed. p. 104*]

104. Apostolic Letters were employed, so that a more worthy prelate might preside over the Church of Bosnia, whose dignity was further enhanced by the granting of the office of Apostolic Legate (1). In subsequent times, Eugene IV, following in the footsteps of his predecessors, when he bestowed the royal crown upon Stephen, King of Bosnia, considered it necessary to consult with him regarding the establishment of the grades of sacred authority within his kingdom. When this prince had neglected the opportunity offered by the approaching enemies, and when Stephen, his son, who succeeded his father in the kingdom, demonstrating greater fortitude, sent a legation to this Apostolic See, declaring himself willing to seize the opportunity offered to his father, Pope Pius II, after consulting with the Cardinals of the Holy Roman Church, decreed the establishment of new cathedral sees in Bosnia and the appointment of suitable prelates to govern them, and he took care that these decrees should be conveyed to the King himself through royal legates (2). However, while every obstacle seemed to have been removed, and while the opportunity appeared favorable for properly establishing religious matters in Bosnia, the state of public affairs, which was deteriorating daily in that region, was lamentably disrupted; and thus, the plans and endeavors, which our predecessors had never ceased to employ for the benefit of the Bosnians over many centuries, were rendered futile. In this great upheaval of affairs, religion itself being struck by great calamities, the Bishop, who alone exercised the pastoral ministry among the Bosnians, was compelled to move, and he established his see in the neighboring city of Diakovar, in Slavonia. The people of Herzegovina, afflicted by the same calamities, were also deprived of the use of the sacred authority of the Bishops of Mercan and Trebinje, whose pastoral governance they had largely enjoyed, while the care of the remaining regions belonged to the neighboring Bishops of Dalmatia. And so, since affairs had reached such a point that those people could no longer experience the protection of their pastors, the Roman Pontiffs were all the more eager to offer assistance, and, as the safety of those people was in greater peril, they, stirred by the zeal of apostolic men, and with the efforts of the

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Sacred Council, consulted on how best to defend the faith and remedy the injuries to religion in those regions. In this matter, the constancy and virtue of the members of the Franciscan Order of the Old Observance shone forth clearly, who, striving to spread the faith in those provinces, sometimes even shed their blood for the sake of the salvation of others (1).

(1) Ibid. lib. XII, ep. CCCLIV.

(2) Gobelin, commentarius Pii II, lib. XL.

[*Latin ed. p. 105*]

APOSTOLIC LETTERS: 105 fruits, greatly meritorious concerning religion. Furthermore, since Our Predecessors did not overlook the grave damages to which those are subjected who are far from the care of the Pastor, by the authority of Their decree issued by the sacred Congregation for the Propagation of the Faith, in the year 1735, on November 5th, an Apostolic Vicariate was instituted, which, as a substitute for the episcopal see of Bosnia, would provide for the Bosnians and Herzegovinians; and this ministry was entrusted to a man raised to the dignity of bishop, so that, establishing his see in Bosnia, he might properly fulfill the spiritual care of both provinces; but since, with God's favor, joyful fruits arose from these endeavors, and the number of the faithful happily increased, in the year 1852, Our Predecessor of blessed memory, Pius IX, in order to spread the Christian name more widely and to foster unity of spirit among those who labor in the Lord's vineyard, established a special and particular Apostolic Vicariate for the affairs of religion in Herzegovina, while preserving the episcopal sees of Mercan and Trebinje, the administration of which had previously been entrusted to Bishop Gregory XVI, "of Ragusa," after consultations with the Imperial Government of Austria. These reasons, initiated by the foresight of Our Predecessors, have greatly benefited those provinces, in which the opportunity to receive the truth offered to men and assistance for cultivating the Christian profession have brought about a great increase in faith, religion, and piety. But now, we understand that We must offer singular thanks to the Most Clement God, with humility of heart, since it has been granted to Us, after so many centuries have passed, after so many grievous vicissitudes, to accomplish and fulfill, for the bettering of the state of affairs of the Church in the aforementioned provinces, what Our illustrious Predecessors so earnestly desired, namely, to establish an ecclesiastical hierarchy there. For it is not to be doubted that the hierarchical administration of ecclesiastical affairs, in which, as in the structure of the human body, the very variety of ranks and offices, by the common bond of faith and charity and by the supreme authority of the head, which moderates and governs all things, wonderfully contributes to the mutual agreement and well-being of all parts, and where, in those provinces, it has been established, it will gradually increase the safeguards for the religious cultivation of souls, and will impel all forces towards the common good,

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so that the faithful may use the same discipline in the duties of Christian life, and the minds of all may be more closely united by the bond of peace and charity.

[*Latin ed. p. 106*]

106 APOSTOLIC LETTERS: Therefore, having been petitioned, and as the gravity of the matter demanded, after considering the opinions of Our Venerable Brothers, the Most Eminent Cardinals, and having carefully weighed the entire matter, raising our eyes to the mountains from whence comes help, and imploring the merciful intercession of the Immaculate Mother of God, of the holy Apostles Peter and Paul, and of the holy Confessing Popes Cyril and Methodius, who, having once brought the light of the Gospel among the Slavic peoples, now intercede for them with heavenly patronage, with Our own initiative, with certain knowledge and mature deliberation, and by the fullness of Our Apostolic authority, for the greater glory of Almighty God and for the exaltation and increase of the Catholic religion among those same peoples, We establish and decree that, in the districts of Bosnia and Herzegovina, a hierarchy of Episcopal Ordinaries be instituted and established according to the prescriptions of the canonical laws, who shall receive their names from the sees which We erect by these Our letters, and which We constitute as an ecclesiastical province. And first, from the territory, jurisdiction, administration, and governance of the Diocese of Bosnia, which, by the blessed memory of Clement XIV, Apostolic Letters dated July 9th, in the year 1773, at the request of the Illustrious Apostolic and Bohemian Queen Maria Theresa of Hungary, was always and perpetually united with the neighboring Church of Sirmium, We, by the authority of the Apostles, forever separate, detach, and sever all regions and places located beyond the River Sava, which are included within the political boundaries of Bosnia; and likewise, We suppress, extinguish, and declare suppressed the Apostolic Vicariates established in the districts of Bosnia and Herzegovina, by the same authority. Then, in the same territory, We establish a new ecclesiastical province, which shall consist of only four dioceses, according to the manner which follows, until it shall have been granted to Us to establish more sees in number. Since the city of Seraium, commonly known as Sarajevo, is located almost in the center of the region of Bosnia, and its location and the convenience of the place offer Catholics greater advantages than other cities, so that they may travel there for their needs, and since Catholic Bishops have also sometimes had their seat in the city of Sarajevo, in the town of "Werfenbosnia," as is said, seeking a safe refuge while the followers of the Pataren sect were raging, therefore, We grant the title of "Werfenbosnia" to the seat of the city of Seraium, and We establish it as an archiepiscopal and metropolitan see, and as the head of the other sees which are and will be in both the Bosnian and Herzegovinian

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province, by Us.

[*Latin ed. p. 107*]

APOSTOLIC LETTERS 107, or to Our Successors, the Roman Pontiffs, for the future, by the authority of the Apostles, by the tenor of the present document, We establish, We enact, and We declare, and to these, We assign three episcopal sees, namely, two which We now establish in the cities of Banialuco and Mandetrio, commonly known as Mostar, and another already established, namely, the sees of Mercan and Tribunje, which the Bishop of Ragusa will administer provisionally until otherwise provided for, assigning them as provincial sees, adding them, attributing them; and We decree that the bishops currently holding office in these sees shall be suffragans to the Archbishop of Werhbosnensis, who shall be subject to his archiepiscopal and metropolitan jurisdiction, and that the clergy and the entire people of these churches shall likewise be subject to the said Archbishop with regard to archiepiscopal and metropolitan rights. Furthermore, concerning the new diocese of Mandetrio, within whose boundaries lies the city of Dumnensis, commonly known as Davno, which the ancients called Delminium, from which the name of the Dalmatians originated, We, having considered that this city, along with its surrounding towns, as ancient monuments attest, once held the dignity of an episcopal see, which was called Dumnensis or Dalmatiae, We decree and command that the Bishop of Mandetrio shall perpetually use and adorn the title of Dumnensis or Dalminiensis, so that the memory of that illustrious cathedral may endure in posterity. Regarding the boundaries within which the new dioceses, which We have mentioned above, are located, We establish, assign, and define them in the following manner, and We command that they be preserved forever and inviolably: namely, the archiepiscopal see of Werhbosnensis shall encompass the region of Bosnia, which extends to the north, along the river Savus, from the mouths of the Verbitza river to the estuaries of the Drina river. To the west, that part which is watered by the Verbitza, from its mouths to Dolnje-Skoplje, and thence southward to the Dinaric mountains, which separate Bosnia from Herzegovina. The southern boundaries shall be those from Suica to the shore where the Rama flows into the Naron, thence from Naron to G-lavatioevum, thence from Glavaticevo eastward to the Drina, thence from the Drina to the river Lim, and finally, that part which is contained by the courses of the rivers Lim and Tjvaci. The eastern boundaries in that part are defined by the area from the Tjvaci river to the mountain Ivic, from the Drina to the mouths of this river. The parishes located within the aforementioned boundaries are as follows:

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(1) Cf. St. Gregory, Moral. lib. 1, ep. XXXVIII.

[*Latin ed. p. 108*]

108 APOSTOLIC LETTERS. Sarajevo, Ban-Brdo, Kiseljak, Kreševo, Podhum, Kula, Kupres, Suhopolje, Trišoani, Rama, Uzdo, Bugojno, Skopje, Golo-Brdo, Rastovo, Fojnica, Brestovsko, Gromiljak, Busovaoa, Podmilačje, Dobretići, Kořićani, Pečine, Orašje, Dolac-Trnavnik, Gueia-Gora, Buoići, Vitez, Crkvica, Zenica, Osova, Zepče, Radunice, Ponievo, Komušina, Bežlja Zabljak, Sutinska, Vareš, Vijaka, Morančani, Tuzla, Bresčke, Zovik, Broki, Gorica, Ulice, Vidoviče, Dubrava, Spionica, Tramosnjica, Graclaeac, Tolisa, Domaljevac, Tišina, Garevo, Dubica, Potočani, Svilaj, Brood, Koratje, Zeravac, Derventa, Plehan, Foca, Sivša. The episcopal region will consist of the remaining part of Bosnia, which is bounded to the north by the limits that separate the Kingdom of Croatia from Bosnia; to the west by those boundaries that are Croatian and those that are Dalmatian, up to Heržan; to the south by that coast which extends from Heržan to Suica; and finally, to the east by the same limits that we described above for the archdiocese of Vrhbosna. The following parishes are located in this region: Banjaluka, Kotorišče, Sokoline, Varcas, Jaice, Glamoč, Grahovo, Petřičevac, Ivanjska, Gradiška, Sasina, Stratinska, Volar, Stara-Rieka, Bihač, Popovići, Vidoši, Cuklič, Listani, Ljubunčič, Livno-Gorica. The Metropolitan and Diocesan See of Mandria will encompass the entire region of Herzegovina, which is bounded to the north by the boundaries of the dioceses of Vrhbosna and Banialuka, to the west by the boundaries of Dalmatia up to the city of Metković, to the south by the boundaries of the dioceses of Merčan and Trebinje, and to the east by the district known as Novofori, commonly called Novi-. The parishes that belong to this diocese are as follows: Mostar, Siroki-Brig, Ljuti-Dolac, Cerin, Gradnići, Gabela, Humac, Veljači, Klobuh, Rasno, Ružići Drinovci, Forica, Posušje, Vir, Roskc-Polje, Grabovica, Bukovica, J5upanjac, Sujica, Seonica, Rakitno, Kocerin, Grradac, Goranci, Dreznica, Konjic. The dioceses of Merčan and Trebinje will retain their entire boundaries, with the same number of parishes remaining under the jurisdiction of the respective bishops. Since in the cathedral churches, the College of Canons serves in place of the Senate, which assists the Bishop in the divine services and lends its aid in the administration of the diocese; and also because through it, the dignity of the cathedral is enhanced, the splendor of the divine worship is increased, and the piety of the faithful is more inflamed, We, in Our Apostolic authority...

[*Latin ed. p. 109*]

By Apostolic Letters, We establish forthwith and perpetually in the archiepiscopal see of Werhbosna a cathedral chapter consisting of suitable ecclesiastics, who shall possess equal voice and votes in their assemblies

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and deliberations, and who shall be bound to duly and diligently perform the divine services and ecclesiastical duties, as well as the obligations and all other matters proper to such a body, according to established times; and We grant to the chapter the faculty of enacting constitutions of sacred canons, entirely in accordance with the sanctions and the Council of Trent, which, nevertheless, shall require the approval of the ordinary prelate, so that they may claim legal force. Furthermore, We will and command that, in other episcopal sees which We have now established, a proper college or chapter of canons be constituted, as soon as circumstances and the course of events permit. We also consider it most pertinent to the cares of Our ministry that, as the number of episcopal sees in Bosnia and Herzegovina increases, the number of indigenous priests in them also increases, who, distinguished by innocence of morals, cultivation of piety, zeal, and who are properly instructed in letters and sciences, may be able to perform all parts of the sacerdotal office abundantly and fruitfully, and who will diligently devote their efforts to propagating the faith in their native regions. Therefore, being certain that the most pious Emperor and Apostolic King will not fail to show generous liberality in this matter, We decree that, without delay, a provincial seminary for clerics be established in the archdiocese of Werhbosna, so that it may provide for the needs of that archdiocese, as well as of the other dioceses which We have joined to it as suffragan sees. And We are firmly hopeful that, through this means, many well-qualified evangelical workers will be produced from the secular clergy, who will faithfully and zealously cultivate the vineyard of the Lord, united in a spirit of charity and concord with the students of religious disciplines, whom they are prepared to serve in their duties, having diligently striven for the benefit of the Church and the salvation of souls in those regions through long labors. We will that those things be carefully observed which have been wisely established by the Council of Trent, both with regard to the administration of the same seminary, and with regard to its instruction and the administration of its goods. Thus, in the districts of Bosnia and Herzegovina, there is a single ecclesiastical province, as far as present circumstances allow, consisting of one archbishop or metropolitan prelate and three suffragan bishops.

[*Latin ed. p. 110*]

By these Apostolic Letters, We declare that We reserve for Ourselves and for Our Successors, the Pontiffs of Rome, the right to divide the established and instituted dioceses into other parts, where it may be necessary, to increase their number, to change their boundaries, and to freely accomplish whatever else We may deem expedient in the Lord. Meanwhile, We command and enjoin the aforementioned Archbishop and Bishops to send reports on the state of their Churches to the Apostolic See at due times, and to keep Us informed of all matters concerning which they believe them-

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selves to be bound by the duties of their office and for the spiritual good of the faithful. Furthermore, in the sacred governance of the clergy and the people, and in all other matters pertaining to the pastoral ministry, the aforementioned Archbishop and Bishops shall enjoy all the rights and faculties with which other Catholic Archbishops and Bishops of other nations are endowed, and shall be subject to the same obligations with which other prelates are bound by the common and general discipline of the Catholic Church. Therefore, whatever has been in force in the past, either by ancient custom of the Churches of Bosnia and Herzegovina, or in the subsequent condition of the missions, by special constitutions or privileges or customs, shall henceforth have no force, either as a right or as an obligation, given the changed circumstances. And for this purpose, so that no doubt may arise in the future, We hereby remove from all such special constitutions, privileges of any kind, and customs, from whatever ancient and memorable time they may have originated, all power to bind or to confer rights, by the fullness of Our Apostolic authority. Therefore, it will be incumbent upon the aforementioned Archbishop and Bishops to decide on matters pertaining to the execution of common law, and on those matters which are permitted to the authority of prelates by general law. Furthermore, We intend that all matters, rights, and persons respectively pertaining to ecclesiastical affairs, of which no mention has been made in these present documents, and to which no special provision has been made, shall be governed, directed, and declared in accordance with the canonically valid discipline of the Church. Now, looking to the Author of our faith and the consummator Jesus, who searches the depths of Our heart, who knows how ardently We desire to extend the glory of His Name, and by what affection of charity We are moved to care for the eternal salvation of the Slavic peoples, which We know they cannot attain except within the bosom of the Catholic Church, We foster firm confidence in these very peoples, whose...

[*Latin ed. p. 111*]

Apostolic Letters, number III, concerning those matters which We have decreed, We have considered, and We deem it most fitting that these be joined with ever greater devotion and study to this Apostolic See, upon which the Church is built. Indeed, We do not doubt that, among Bishops and Priests, whose number is ever increasing, We shall never allow the office of Apostolic care to be lacking; and We are most certain that not only the children of the Catholic Church will avail themselves of this opportunity to progress more and more in religion and piety, but also that erring brethren, who are united with us in the same faith and the same language, will be encouraged to return to the bosom of their Mother, who has, through the Gospel, equally brought forth all in Christ Jesus. May the merciful God, who works great wonders alone, deign to hear our fervent prayers, that We

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too, being filled with the light of heavenly grace, may break the miserable chains of discord, enter into the true fold of Christ, and, meeting in the unity of faith, may be one body in Christ with Us. Finally, We decree that these Our Letters may never, at any time, be noted or impugned for any flaw of deceit or fraud, or for any other defect in Our intention, and that they shall always be valid and firm, and that their effects must be inviolably observed in all things. Notwithstanding any Apostolic, or synodal, provincial, or universal Constitutions, general or special, promulgated, nor the existing rights or privileges of ancient sees in Bosnia and Herzegovina, and of the Apostolic Missions and Vicariates established there afterwards, and of any other Churches and pious places, confirmed by Apostolic oath, or by any other means, and all other contrary things whatsoever. Although, for the derogation of these, a special mention would have to be made, or any other form, however elaborate, observed, We expressly derogate from all of these, and fully satisfy the consent of those who may have an interest. We also declare void and of no effect anything that anyone, knowingly or unknowingly, may attempt to alter in this regard. We wish that these Letters, even in printed form, and signed by the hand of a public Notary, and sealed with the seal of a man of established standing in ecclesiastical dignity, shall have the same validity as would be given to the expression of Our will by this very document. Therefore, to no one whatsoever is it permitted now to alter the page of Our erection, constitution, institution, restoration, dismemberment...

[*Latin ed. p. 112*]

112. APOSTOLIC LETTERS concerning suppression, assignment, addition, attribution, decree, mandate, and the will, are to be observed and obeyed, and no one should dare to violate or, with reckless audacity, contradict them. If anyone should presume to attempt such a thing, let him know that he will incur the wrath of Almighty God and of the blessed Apostles Peter and Paul. Given at Rome, near St. Peter, in the year of the Incarnation of Our Lord one thousand eight hundred and eighty-one, in the fourth year of Our Pontificate.

C. CARD. SACCONI, SECRETARY

T. CARD. MERTEL.

SEEN BY THE CURIA

I. DE AQUILA, and the VICE-COMMISSIONS

Place: J3$ Lead, Registry in the Secret Archives.

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I. CUGNONIUS.

[*Latin ed. p. 113*]

113 FROM THE HOLY CONGREGATION CONCERNING THE RESIDENCE AND SUSPENSION OF BISHOPS. Dated August 14, 1880. SUMMARY OF THE CASE. In the town of Saint-Étienne, within the Diocese of B., there exists a rural parish. Its titular archpriest is the Bishop himself, and the actual care of the parish is administered by a curate, who is removable at the Bishop's pleasure. For several years, this office was held by the priest, Father P. However, without consulting the Bishop, he abandoned the diocese and, with the concurrence of others, assumed the archpriestal care of a church within the Diocese of F. Furthermore, he was sent by the Bishop of that diocese, and entered into the actual and corporal possession of that property. The Bishop of B. was informed of this on March 5, 1880. This greatly disturbed the Bishop of B., who, on March 9, 1880, imposed upon the priest the penalty of suspension from divine duties, in accordance with the Twenty-Third Session of the Council of Trent, chapter 16, unless the priest returned within three days to his diocese, and specifically to the church of Saint-Étienne; but, unfortunately, this warning was disregarded by the priest, Father P. Deeply grieved by this, the Bishop presented his complaints to the Holy Congregation on March 15, in which he laments the actions of the aforementioned priest, as well as those of the Bishop of T., and proposes the following questions to resolve the doubts. "I. Whether the order given by us on March 9 of this year must be strictly observed by the priest, Father P. "II. Whether, and how, the priest himself can be compelled to return to the Diocese of B. as soon as possible." Records, Volume XIV, page GLIX.

[*Latin ed. p. 114*]

114. REGARDING THE RESIDENCE: The Bishop of T., having been asked by information and by vote, responded: that he considered it to be the right of the priest P. to have an oeconomate, which is removable at the will of the patron, to seek a better and permanent place; and that he could not exclude him from possessing that parish, so that the Bishops might properly attend to the souls entrusted to him.

A SYNOPTIC DISCUSSION OF THE RIGHTS OF THE ARCHPRIEST.

Firstly, it appears that this archpriest has withdrawn from his proper diocese and is therefore not bound to observe the precept of Bishop B. of March 9th, and this is not the only reason. And firstly, no law compels Bishops to require residence from those who do not have residential benefices, as stated by D. Martinis, *Resolutiones Iuris*, lib. 1, cap. 107, n. 1 and following. And if those who enjoy simple benefices cannot be strictly compelled to

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reside, much less can those who possess no benefice be compelled, and this applies even if they have received Holy Orders in a patrimonial position, as stated by D. Martinis in the aforementioned passage, n. 3; Garzia, p. 3, cap. 2, n. 4; Pigliateli, *Consilia*, vol. 56, tom. 3, n. 22. Furthermore, in our case, the priest P. does not possess any residential benefice; therefore, he could not be strictly compelled to reside.

Secondly, the priest P. could not be compelled to reside according to the decree of the Council of Trent, Session XXIII, chapter 16, concerning residence, because he was not attached to any church. The act of attachment is lacking, and it could not be supplied by the oeconomist or curate appointed by the Bishop, which is what happened in this case; because this office is not a true benefice that is conferred in title, since it lacks the perpetuity necessary to constitute a true benefice. Therefore, he could withdraw from the diocese, even against the will of the Bishop, according to the opinion of Pignateli, in the aforementioned passage, n. 3; Garzia, *De Beneficiis Parochialibus*, part 2, cap. 5, n. 102. Gallemart declares, concerning the Council of Trent, Session 23, cap. 16, concerning residence, and the Sacred Congregation of Councils in Eugubina, January 21, 1797. Nor does attachment present an obstacle if it has truly been made. For Trent, in the aforementioned decree, speaks of those who, without the consent of the Bishop...

[*Latin ed. p. 115*]

The reasons for residence are superseded. If a priest requests leave, and that leave is unjustly denied by the Bishop, he may depart, even if he is assigned, because he is not bound to the residence, as stated in *D. de Martinis, loc. cit., n. 8*: in which passage, the assignment to the Council of Chalcedonensis differs from the assignment to Trent, as extensively discussed by Benedict XIV in *De Synodis Dioecesibus*, Book XI, chapter 2, n. 8 and following. For it is required that there be a just cause for denying a priest leave, and the Bishop must appropriately provide for him in such a case, as stated in Niccolò Lucubr., *Can.,* Book 1, § 22, n. 3, and by Cardinal De Luca in *Discurs. 2, adnot. ad Conc. Trid., n. 4*. If a priest, P., did not request leave from the Bishop, but rather departed, not out of aversion towards his own parish, but because he knew for certain that the Bishop would unjustly deny it, as he himself manifested in a letter to the Bishop, T., then the priest could not be compelled to remain in residence. For it is established in law that a priest cannot be compelled to remain in a residence that is so meager that it does not even provide for necessities of life. But in our case, the emolument assigned to the priest, P., by the Bishop, was insufficient to meet the needs of both himself and his family, as he himself explained in the aforementioned letter to the Bishop, T. It would be too harsh to burden this priest with the obligation of residence when he cannot, by virtue of his benefice, obtain sustenance at the Bishop's

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discretion; whereas, on the contrary, it is consistent with justice and equity that those who serve at the altar should live from the altar. In this case, the priest was not required to reside, as taught by Cardinal Petra in *Ad Const. Apost.* in the Constitution of Innocent XII, and by the Congregation in Veliterno on September 21, 1816. Therefore, if a priest, P., is not assigned to any church, nor has he received any benefice by which he is bound to reside, he may be considered to be like those clerics who are of their own free will, and who can freely depart from the diocese, even without consulting the Bishop, according to the decree of this Holy Order, issued on December 5, 1574, in Ariminen. A cleric who is not assigned to a specific place cannot be compelled by his Bishop to remain, lest he depart from his diocese and go elsewhere.

[*Latin ed. p. 116*]

146. The parish priest shall retain his residence. Indeed, this is considered established among other religious congregations, as Girald affirms in *Thesaurus de Poenitentia*, part 2, chapter *Resid.* Furthermore, the *Ius Canonici*, book 1, title 22, number 9, states the same. In Quarten, it is also given that a priest cannot be deprived of his rightful benefice and the assignment to a particular church, nor can he be excused from the jurisdiction of the Bishop, nor from obeying his commands for the recall to his own diocese, except on another ground, namely, that he cannot be compelled to obey the Bishop's command if the decree of March 9, 1880, is invalid. And in truth, the priest P., being assigned to the Archpresbytery, rightfully retained his position, and therefore became subject to the Antistite [Bishop]. Furthermore, it is established in law that a suspension of office is valid only if the one who imposes it has the power to do so. However, Bishop B. imposed this suspension on priest P. outside of his territory, where the priest was exercising the office of the Archpresbytery, and therefore, it was permissible for him to refuse to obey it. Therefore, it can be concluded that priest P. is free from the obedience of Bishop B., and is therefore not obligated to observe the decree of March 9.

RIGHTS OF THE BISHOP. On the other hand, several things exist that protect the rights of Bishop B. Firstly, the sixth decree of the Council of Chalcedon, which the Fathers of Trent wished to renew, establishes that all clergy should be assigned to a particular church, and that they must diligently serve that church, so that those who abandon their post without the consent of the Bishop should be forbidden from exercising the sacred ministry. *Concilium Tridentinum*, Session 23, chapter 16, concerning reforms. And although this assignment is different from that prescribed by the ancient canons, it is nonetheless clear that clergy are strictly prohibited from leaving their assigned post without the consent of the Bishop. This is also confirmed in the Roman Council, Title 6, chapter 6, and has been clearly affirmed on many occasions by the Sacred Congregation of

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the Council and in both ancient and recent pronouncements. Senogallien, August 19, 1592, Ostunen.

[*Latin ed. p. 117*]

RESIDENCES: H 7, January 20, 1616, Amerina (Amelia), May 8, 1756, Nucerina, September 5, 1818, Reatina (Rieti), January 26, 1833.

From these facts, it is clear that the priest P. diligently served the Archpresbytery of the Church in the town of St. Stephen; and this matter signifies more than a simple assignment, it is plainly evident that, by no right, he could have abandoned the aforementioned Church; and therefore, the Bishop B. rightly exercised his authority when he summoned him back to his residence through censures.

Although many authors assert that clerics who do not hold a benefice and who are required to have a fixed and personal residence can leave and go wherever they please, and that Bishops cannot deny them dismissal letters; and some ancient resolutions of the Sacred Congregation are cited in support of this view; nevertheless, Fagnanus warns against such collections of opinions, and contends that the judgment of these authors is entirely contrary to the decree of the Council of Trent, in chapter "Admonet" number 15, concerning Resignations.

Because clerics who are assigned to the service of a particular church, and who are ordered for the necessity or benefit of that same church, are considered as servants or tenants bound to the land, who cannot leave the estate without the Lord's permission, they cannot, therefore, leave the church, nor can they withdraw from the obligation contracted with it; and therefore, the Bishop can refuse them dismissal letters. (Menoch. de arbit. eas. 422, n. 3; Grarzia de benef. p. 2, cap. 5, n. 102; Sacred Congregation in Reatina, January 1833; Sacred Congregation of St. Germanus, August 12, 1871, §. Verum).

However, the resolution of the Sacred Congregation in Ariminen, December 5, 1574, is wrongly cited; because this resolution was issued concerning clerics who were not at all assigned to a specific place; indeed, the same decree ordered that those who are assigned against their will must be retained.

But, from the priestly ordination that the priest P. received in the Diocese of B., it must be argued that he was bound to his church, and especially to the church of St. Stephen, in which place he was born, and that through this assignment, he fully satisfied the law of Trent, even if this is not evident from the documents.

[*Latin ed. p. 118*]

The question of residence cannot be demonstrated, because whatever is done is presumed to be done lawfully and according to the law, unless the contrary is clearly demonstrated. And even if the hypothesis were that

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the priest P. was not assigned to any Church in his ordination, this would not benefit him. For, according to the Constitution *Innocent. XIII, incipit e m Apostolici Ministerii*, issued to restore ecclesiastical discipline in the Kingdoms of Spain, and by Pope Benedict XIII through another Constitution which begins *In supremo ad universos Ecclesiae Antistites*, everyone who was not assigned to any Church in his ordination must afterwards be assigned by his own Bishop. Indeed, the words of the Apostolic Constitution state: "But if anyone is found to have already received the clerical tonsure, or has already been promoted to the minor or major orders, and has not been assigned to any certain Church or pious place, and the assignment by the Bishop, either by himself or by his predecessors, has been omitted, let the Bishop immediately supply this omission." Therefore, even if such an assignment was omitted in the ordination of the priest P., it can now be supplied by the Bishop B.

The older resolutions of the Sacred Congregation, in which it is said that a cleric who is not assigned to a certain place by his Bishop cannot be forcibly retained, lest he depart from his diocese and accept a parochial position elsewhere, are to be understood in this sense: that the Bishop cannot forcibly retain clerics against their will without a just cause, and unless he provides for them with due support. *Card. De Luca, disc. 2, Adnot. ad Conc. Trid. n. 4; s. Congregatio in Nucerina, 5 Septemb. 1818*. This condition is always found to be included in subsequent resolutions, as can be seen in *Reatina, 26 Ian. 1833; s. Germani, 12 Augusti 1871*. A just cause is held to exist when someone serves the diocese when the assignment is made to only one Church; and when the Church to which someone is assigned is entirely without a pastor, then even a simple priest assigned to residence can be compelled to reside there, even if he does not have a benefice. *De Martinis, Resolut.*

[*Latin ed. p. 119*]

RESIDENTIAE 119 iur. lib. I cap. 107 num. 4. This necessity is demonstrated in the military affair concerning the Church of St. Stephen, as the Bishop himself testifies in his letter to the Sacred Congregation of the Council. Furthermore, an appeal is made to nullify the decree of March 9, 1880, based on the supposed exemption of the priest P. from the jurisdiction of Bishop B. However, it is certain that this priest was ordained by Bishop B. and is therefore subject to him. And this subjection pertains not to the person, but to the Bishop, and to the Bishop as he exercises his jurisdiction within the Diocese of B., in which the priest P. was born, received ordination, and from which he departed. For it is established in law that no subject can be subjected to the authority of a superior without the license and consent of that superior. Indeed, the nature of dominion implies that he who is the lord of a thing can dispose of it at his pleasure, and can vindicate it from anyone. Furthermore, the priest P. is subject to Bishop B. by title,

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whether of origin, or of domicile. However, it is certain that the Bishop can regularly impose a suspension upon his own subject, even if that subject is outside his own Diocese, provided there is no impediment to judgment. For if a suspension is imposed by a particular precept from the Bishop, then the subject will be bound by this censure even if he is residing in a foreign Diocese, because the precept directly affects the person, wherever he may be. Thus, Scavini states in *lib. 1. tract. IV disp. III de censuris cap. I*, in his annotations, that a priest remains suspended, even in a foreign Diocese, if the offense is considered to have been committed within the Bishop's own Diocese, as is the case with those subject to the censure for non-residence; or if the Bishop censures a cleric who is required to assist the Church and is outside the Diocese, and refuses to assist; and the reason is that the sin of non-residence is considered to be consummated within the proper territory. See Liguori, *Homo Apost.*, tract. XIX n. 5, and *Op. Mor.* I. VII n. 22. Therefore, the suspension imposed by a particular precept upon the priest P., who was required to assist the Church of St. Stephen, and who refused to do so, is valid, even if he was residing in the Diocese of T.

[*Latin ed. p. 120*]

d 20. RESIDENCIES. Finally, in order to more firmly establish the rights of the Bishop, it can be added that, as has been declared in similar cases by the Sacred Congregation, priests who are rebellious against the authority of the Bishop can be compelled by censures to return to their own diocese as quickly as possible. For the sake of example, I will present two cases. The first is the Decree concerning the Residence and Suspension of September 29, 1818, concerning Gervasio Aleandri, a native of the Diocese of Nuceria, who had gone to the Diocese of Tudertia, where he held the office of Rhetor and Rector in the Seminary. He maintained that he could not be retained in his own diocese by his own Bishop, because he had not been assigned to any office in the Church during his ordination. However, the Sacred Congregation decided that the decree of suspension issued against him by the Bishop of Nuceria should be upheld, and the order by which he was recalled to his own diocese should be enforced, provided that the Bishop provides Aleandri with suitable support in the diocese. The second case is the Decree concerning Reatina of January 26, 1833, which concerned Gaspare Britio, from the Diocese of Reatina, who, after being initiated into the minor orders by his Bishop, was taken among the students of the Congregation of St. Vincent de Paul in Rome, and was promoted to the lower and sacred orders by the Most Reverend Vicar of the City. He was then assigned to a position with a suitable endowment in the territory of Reatina. After a few years, he abandoned that sacred family and returned to his homeland, where he accepted a position teaching children. Five years later, he was successfully appointed to the Archpresbyterate in the town of Montebello in the Sabina region of the Diocese, and, after the Apostolic Letters were expedited, he

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was installed in his office and subsequently entrusted with the office of Vicar Forane. However, while the Bishop of Reatina had the power to grant him permission to leave, and even to recall him, the Sacred Congregation responded that he could be compelled to return, provided that the Bishop provides for him in a suitable manner. Having properly considered these matters, the judgment of the Sacred Congregation was as follows:

[*Latin ed. p. 121*]

RESIDENCE: Whether the decree of Bishop B. of March 9, 1880, can be maintained, and in what manner a priest, P., is obligated to return to his proper diocese in such a case. RESOLUTION. The Sacred Congregation, on August 14, 1880, having considered the matter, decided that the answer should be: Affirmative in all respects, provided that due provision is made for the aforementioned priest by the Bishop. FROM WHICH THE FOLLOWING ARE DERIVED: I. It is clear that priests become subjects of their Bishops through the sacrament of Holy Orders; and that subjects, without a superior's consent, cannot withdraw themselves from the authority of their superior. II. Therefore, Bishops can strictly prohibit clerics from leaving, and can retain them, even against their will, provided there is a just cause and that they are provided with due sustenance. III. Likewise, it is within the power of Ordinaries to forbid the exercise of sacred functions to clerics who are assigned to a church, and to those who, without knowledge, leave that church, as stated in the Council of Trent, Session 23, chapter 16: "that if anyone should abandon his place without the consent of the Bishop, the exercise of sacred functions shall be forbidden to him." IV. The Sacred Congregation has declared that, in similar cases, priests who are disobedient to the authority of the Bishop can be subjected to censures, so that they may return to their proper diocese as soon as possible. V. It cannot be doubted that a censure, being a particular precept binding the subject, even when he is in another diocese: for the censure, when imposed in this manner, follows the person as a shadow follows the body. VI. A priest, residing in a certain place, subject to his Bishop by domicile and by the sacrament of Holy Orders, assigned to his own church, which he governed as a pastor, has been lawfully forbidden from the exercise of sacred functions, until he returns to his own parish, which he had abandoned without the knowledge of the Bishop.

[*Latin ed. p. 122*]

ON THE DAY OF THE SUSPENSION, July 9, 1880. SUMMARY OF EVENTS. The Archbishop C. proposed to the Metropolitan Chapter that, in order to adorn his Metropolitan church and to seek out the tomb of St. James, which was still hidden, they should allocate sixty thousand royal Spanish *hispana* annually, of which twenty thousand would be paid by the Church Fabric, and forty thousand by the Archbishop. These proposals

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were unanimously approved, and the Archbishop then requested the Chapter to choose several canons from among the chapter members, who, acting on behalf of the Chapter, would assist the Archbishop in the promotion and direction of the works. With this matter resolved, the works were begun, and the tomb of St. James was discovered. Meanwhile, it happened that the Dean of the Chapter passed away; his successor, upon assuming the deanship, divided the Chapter into two parts: one adhering to the Order, and the other under the direction of the Dean. This latter part multiplied arguments, and doubled the opposition and obstacles to the progress of the works, to the scandal of the religious people. Wishing to remedy these and other evils, the Archbishop held certain private meetings with all the canons, at their request and with their agreement. Therefore, all unanimously agreed to fulfill his mandate "in a manner and form strictly determined," so that the hoped-for prospect of peace might arise. But shortly thereafter, obstacles and difficulties arose again; and in order to put an end to such obstacles, the Archbishop, "founded" on the unanimous convention mentioned above, sent formal letters to the Chapter: to formally confirm what had been accepted by formal and common consent in the pre-

[*Latin ed. p. 123*]

SUSPENSIONIS 123: 1. Praised be the gatherings; 2. so that those who agree or disagree » with the purpose of the work of decoration of the church of St. James, may proceed according to law. The Dean opened these letters, but only in the presence of the chapter, and he withheld them from the chapter: he dared, impiously, to respond to the Most Reverend Archbishop, saying that he could not deliver the letters to the chapter. Furthermore, in this matter during the chapter meeting, when questioned by the chapter, he denied the presentation of the letters. Then the Ordinary implored the Pope, so that with his authority he might admonish the Dean, acting in this manner. Subsequently, the Archbishop, requested by the Sacred Congregation, reported that the Dean confessed to the penetration of abuses, although he tried to excuse himself in vain; indeed, he declared himself prepared for greater and worse things. He also reported that the Dean himself and his associates, having been heard sitting in the choir, and with their heads covered, heard the reading of the Brief of the Holy See, concerning the granting of a plenary Indulgence, with the Apostolic blessing; while the Prelate and those with him stood, and with their heads uncovered, as was proper, and carried out this task. Wherefore, since such actions appeared to be in no way tolerable, it was ordered that the Dean and his supporters perform spiritual exercises for ten days in a pious house, to be determined by the Most Reverend Archbishop. However, according to the report of the Archbishop, no one obeyed; all of those mentioned, not wishing to pronounce judgment on this matter, if one were to be excepted, called the

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authenticity of the mandates into doubt, or declared themselves innocent, or that the mandates, if authentic, were vitiated, or that they would appeal to the Supreme Pontiff, and refused to perform the spiritual exercises at all. Furthermore, recounting these injurious actions of the canons, the Most Reverend Archbishop requested that these canons be suspended together with the Dean, and be deprived of both active and passive voice for a long time, so that no disturbance might arise in the Chapter, after the death of the Archbishop, as the evil party hopes.

Dispute synopsis: THE RIGHTS OF THE ARCHBISHOP. The actions committed against the Ordinary by the Dean and his associates deserve punishment from the Archbishop.

[*Latin ed. p. 124*]

124. The faults of suspension can easily be overcome. For it is certainly known that the offenses of clerics are punished by suspension, especially by the deprivation of active and passive voice, as Passerinius states in *De canonica electione*, chapter 10, number 140; García̓s in *De Beneficiis*, part III, chapter 2, number 526; and Scarfantonius in *Ceccoperium*, book IV, title 3. Nor can the Dean and his associates claim to be punished without being heard: for if they had any such right, it would not be worth defending against scandal, irreverence, and shameful rebellion against the Ordinary. Indeed, it has been proven that these chapter members have openly instigated a scandalous war against the Most Reverend Prelate. And the Dean cannot defend himself by claiming that he opened the letters of the Most Reverend Ordinary and gave a response of his own accord, disregarding the canonical constitutions which prohibit the Dean from proposing anything again to the Chapter about which a discussion has already taken place, and because previous Deans have been accustomed to opening such letters. For the Most Reverend Prelate, to whom the Dean was then only a mandator, was addressed by the Dean in his letters, proposing something for the first time, in order that, after a long period of opposition, he might finally achieve his goal. Therefore, the Dean's conscience and the sanctity of his oath were preserved. However, it is false, as testified by the Most Reverend Archbishop, that he obtained this practice from a Dean. Furthermore, the Dean himself, after being presented with the accusation, dared to summon the Most Reverend Archbishop before his own archiepiscopal court, and persisted in the accusation with impudence, despite just and repeated prohibitions. Moreover, the aforementioned rebellious canons presented a petition to the Supreme Pontiff, in which twenty-three heads of accusation against the Most Reverend Prelate are described. And concerning these matters, after information was sought from a distinguished man, he reported from trustworthy and discerning men, with carefully collected information, that these accusations were nothing more than either bold and impudent calumnies, or evident falsehoods, or assertions lacking any

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proof, or actions which had no relevance to canonical matters: if anything is to be excepted, it will be addressed in due time, of which...

[*Latin ed. p. 125*]

125. The suspension, if it possessed any canonical validity, should not have led to such a state of affairs. The very reason for the accusation clearly demonstrated the Prelate's desire to defend the rights of those involved, as the Archbishop himself explicitly stated. For the Archbishop said: "In the presence of his brethren and others, even in the very cloister, in the public temple attached to the metropolitan church, the Dean boldly declared: 'I will crush the Prelate.'" Although the Dean and his associates deny having sat with their heads covered while the Apostolic Letters were read, this is vehemently testified by others present, as evidenced by the records drawn up by the Notary and signed by them. There are also other facts which demonstrate the canons' obstinate disobedience and their derelict of their canonical duties, as can be seen from the Archbishop's words. "When," he said, "I invited the Dean to show me the canonical title authorizing him to celebrate, to preach, and to hear confessions, he not only responded most irreverently, but also provoked me to the tribunals, and actually presented a most audacious complaint against me in the aforementioned diocesan tribunal. Meanwhile, although I had forbidden him to celebrate until he presented such a title, he declared that he did not have it, and before the chapter he repeated: 'I will not humble myself, and I prefer not to celebrate.'" And further: "He knows that I am ready to grant him this license [namely, to celebrate], if he would only humble himself the least bit in requesting it; yet, because of his arrogance, he refuses this slightest act of humility, and is prepared to pursue this matter indefinitely." And again, regarding the same matter, he said: "He neither celebrates, nor preaches, nor even sings, nor remains in the choir, but instead, he incites rebellion, leads others astray, and, so to speak, creates a schism within the Church." Furthermore, after having performed their spiritual exercises, two of the canons, endowed with ample authority by the Chapter, as they claimed, and without having requested dismissal, traveled to Rome with dismissal letters. They repeated:

[*Latin ed. p. 126*]

126. The suspension of the Emi Archbishop does not require his consent, nor can it be refused by him, since, acting as representatives of the chapter, they are defending the rights of the chapter against him, according to the sentence of the Urbem court. But since this is false, they should have obtained dismissal letters; however, they attempted to assert their right, even if they had been refused, and thus, the faculty to celebrate in Rome was rightfully denied to them. The canons insisted, but since they could not obtain anything unless they obtained the aforementioned letters,

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they preferred to abstain from celebrating in Rome for a long time with a persevering spirit, rather than request anything from their prelate. Indeed, this obstinacy, hardness, pride, and disobedience are most evident, as the canons stubbornly reject the authority to perform spiritual exercises. There is no doubt, said the Ordinary, that the Dean and his associates deserve suspension from office, and deprivation of both active and passive voice. For their manner of acting in the chapter meetings is such that nothing is permitted to be said to the opposing side; and sometimes, compelled by necessity, they leave the chapter hall, while the Dean and his associates remain there, deciding, in the name of the chapter, whatever pleases them. And this faction has gone so far as to grant two canons who were going to Rome, who were not rightfully sent by the chapter, the power to spend whatever they pleased. But feeling that they were not at all endowed with such great power, the chapter, in order to grant this to them, sought to convene, and the Dean and his supporters convened, a certain meeting of the chapter. However, the healthy part of the chapter, adhering to the Archbishop, made a protest against this convocation of the chapter in Rome, based on the following reasons: 1° The number of suffrages did not reach half of the chapter members, which is insufficient to make decisions on matters of such importance. 2° The Most Reverend Archbishop was not summoned, although he should have been summoned according to the discipline of Hispaniae. 3°. Four administrators, acting in their office, cast their votes, which was not permissible; for it was being decided on a matter concerning the granting of power to themselves. 4°. With these votes removed, the number of votes against is now greater than the number in favor. 5°. Since the matter concerned a matter that would cause very serious harm.

[*Latin ed. p. 127*]

Chapter 127 of the Decrees could have been invoked, by virtue of the constitutions concerning the convocation of the chapter, which stipulated that those absent by more than ten leagues should not participate, which, however, was not done. Then, the Archbishop, affirming that all that was stated in the protestation was true, regarding the other chapters, and addressing the Dean, and other rebellious individuals, said: "If the sessions of the chapter are carefully examined, and if one considers from where those who intend to draw their power to contradict are deriving it, it is truly the case that there are no valid sessions, as is clearly evident in the four protestations, which have been presented thus far by good canons." Finally, regarding the intentions of the adversaries, the Ordinary added: "This man and his associates are sparing no effort to increase the number of supporters in the chapter. Among other things, they threaten the reluctant with the loss of their positions, saying: 'The Prelate will soon die; then our governance will be yours, because we are more numerous in the chapter;

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Woe to you in those days!'" Since these things are so, and since they show no sign of repentance, and since they persist in their disobedience and contumacy, and since they make a mockery of authority, and easily disregard the mandates of this Holy Congregation, and since they cause scandal and dismay to good people, and since worse evils may be feared for the future, it is necessary to act decisively, and to impose upon them the penalties demanded by the Most Reverend Archbishop.

RIGHTS OF THE CANONS. However, when it comes to the most serious penalties, those imposed by Canon Law, certain considerations must be taken into account. The canons who came to Rome, to act in this matter in the name of the chapter, after offering prayers, requested that the penalty of spiritual exercises be postponed, so that the innocent might not be punished, while they themselves wished to prove their innocence. The same can be said regarding other penalties, if they are to be imposed. Indeed, the Most Reverend Archbishop accused them; but both the Dean, and the other canons who were to be punished, after offering prayers on this matter, deny all the accusations made by the Most Reverend Archbishop. Hence, unless it is first legally established what acts the canons committed, it seems that they cannot be punished. Furthermore, regarding some matters, it is not entirely clear, since, apart from the testimony of the Most Reverend Archbishop, no other proof is available.

[*Latin ed. p. 128*]

128. The Dean, indeed, marvels that he, a man so evidently unworthy, has been described by the Most Reverend Archbishop as such a deplorable individual, especially considering that he has received numerous honors from the same Archbishop. Regarding this matter, he presents his letters, in which the aforementioned duties were assigned to him, and laments that he is, at least, being treated contradictorily by the Most Reverend Archbishop. He denies that he responded to the Archbishop with insolence and audacity; and to prove this, he presents his letters sent to the Archbishop, which are found in the records. He denies that he promoted disobedience and rebellion against the Prelate, stating that he did nothing other than defend the rights of the chapter. Finally, he denies, as do the other canons, the accusations made against them by the Archbishop, clinging to the truth. If the Dean and the other canons refused, with stubborn will, to perform the spiritual exercises, they claim that this was because they did not believe in the authenticity of the mandates, and because, unheard and undefended, they were condemned unjustly. Furthermore, even if they committed some of the aforementioned acts with indecorum and audacity, when more severe penalties are being considered, it must be investigated whether some mitigating circumstance should be taken into account. In this case, the penalty should be lessened. However, in order for this to be demonstrated, the matters previously discussed, which provided an

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opportunity for the actions now being considered, must be examined. But since you, Most Reverend Fathers, have not yet sought your judgment on those matters, it seems that judgment on the penalties themselves should also be postponed. Certainly, some mitigating circumstance can easily be found. A most distinguished and upright man, whose judgment has been sought in this case, reports that the regrettable discord between the Most Reverend Archbishop and the chapter could have been avoided, if the Most Reverend Prelate had acted differently with certain canons who, through their duties and merits, have earned praise, and who, being more steadfast in the ancient customs, opposed the Archbishop. He suggests that the cause of the dissensions and subsequent events may have been that the Most Reverend Archbishop decreed something against the will of the majority of the chapter, and that, by him,

[*Latin ed. p. 129*]

129. Due to suspicions arising, certain professors of the seminary, and even the Rector himself, were removed from their offices, having failed to secure the support of the majority of the Chapter. This, in turn, gave rise to anger, and that manner of acting, which so easily stems from disturbed minds. It must also be noted that these individuals were punished by the deprivation of their voice, particularly the active voice, before a judgment had been rendered by the Most Reverend Archbishop concerning all of their matters, which made their situation appear more serious and rendered their own defense more difficult. For those who are punished in this way are unable to act in any way for their defense before the Chapter, nor, which is even more, can they authorize the drawing of funds from the Chapter's treasury. Finally, it seems prudent, Most Reverend Fathers, that, given that the minds of some of the Canons have become so agitated that they have committed several scandals and lamentable acts, care should be taken that nothing worse arises from these severe punishments. Having briefly set forth these matters, and with many other things that cannot be mentioned out of respect for the clergy, the purpose was to determine whether and how the Most Reverend Archbishop's request should be answered in this case.

RESOLUTION. The Sacred Congregation of the Council, having considered the matter, on July 24, 1880, decided that the following should be answered: "Affirmatively," and that the Dean should be punished with suspension from office; and that the aforementioned Dean, and thirteen other canons who signed, both the petition of March 24, 1880, and the petition of June 11, 1880, which were printed, should be deprived of the active and passive voice, at the will of the Holy See; and that the aforementioned exercises of devotion, which are to be carried out within eight days from the notification of this decree, should remain firmly in place. Furthermore, the aforementioned signatories of the printed petitions must,

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within the stated term, retract the offensive words directed towards the Most Reverend Archbishop, under the threat of more severe penalties. Acts, Vol. XIV, fol. O LI X. 9.

[*Latin ed. p. 130*]

130. FROM THESE, THE FOLLOWING MAY BE GATHERED: I. That the faults of canons can rightly be punished, especially by the Apostolic See, through suspension from office and deprivation of both active and passive voice; so that those who, using their office and the privilege of speaking in the Chapter, stir up sedition and foment rebellion against the Ordinary, may be held accountable. II. That the canons in question appear to have been severely punished with heavy penalties and the threat of even greater ones, unless they retract the libel published against the Ordinary; for their conduct did not appear to have the objective of defending their own rights, but rather of opposing the mind of the Most Reverend. (1) (1) Besides the aforementioned libel, presented to the Supreme Pontiff by the dissenting canons, in which twenty-three heads of accusations were listed against the Most Reverend Archbishop, another libel was also published by them. In the first, according to the information of a most distinguished man, there were only accusations, completely devoid of any proof; so that they resolved themselves into mere calumnies. In the second libel, which could rightly be called infamous, and which was printed and publicly disseminated, such things were written against the Ordinary that they could only have been uttered and published by men of depraved mind and inflamed by evil passion. -AA/VI/VW*- CONCERNING THE VALIDITY OF THE CHAPTER. August 14, 1880. SUMMARY OF FACTS. Due to the ravages of time, unhealthy air, and other causes, the Chapter of T. has deteriorated to such an extent that, at times, neither the sacred conventual services nor the service of the choir can be properly performed. Therefore, with the counsel of the Bishop, the Archpriest and the Canon P. decided in the year 1879 that, with the prior consent of the Chapter, the Most Reverend would offer...

[*Latin ed. p. 131*]

CONCERNING THE VALIDITY OF CHAPTER 131: It is reported that Father Anthony, a priest from the neighboring Diocese, was elected to a Canonry with the right of succession to the Canonry upon its first vacancy. For this purpose, a Chapter was convened on June 26, 1879, after the customary warning, affixed in the Sacristy, the preceding day's ringing of the bell, and further announcements made by the Sacristan to each Canon, as the Bishop reports. Eleven Canons attended the Chapter session, to whom the matter to be decided was presented by the Archpriest, to be approved or disapproved by secret votes, and in fact, six favorable votes were cast. However, on the other hand, six Canons, including the Pro-Vicar General, who was also a Canon and had attended

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the aforementioned meeting, presented a petition requesting that the aforementioned resolution be annulled, both because the individual Canons had not been warned as prescribed by the Chapter Constitutions, and because the matter to be discussed had not been expressly announced three days prior, as the Constitutions themselves require; and the votes were taken accordingly. Since, on June 28th, a decree was issued by the Vicar, declaring the Chapter session invalid, and rendering null and void everything that had been done therein, the Chapter was again convened on the 29th of the same month, to discuss the same matter, and with eight Canons present, because the Archpriest and the Canon, Father [Name], had left the assembly, the proposal was rejected with seven votes. Father Anthony, already elected, deeply grieved by this, appealed to the Sacred Congregation. The Bishop, when consulted about the matter and the vote, observed: that in the Chapter session held on June 26th, no objection or protest had been raised; indeed, all had signed the act of the Chapter; and therefore, with regard to the validity of the Chapter, there seemed to be no doubt remaining. Regarding the legitimacy of the convocation, he stated that everything appeared to have been done properly, since all had been present. And if anything is considered to have been omitted, why did no one protest before the Chapter session was concluded? Therefore, it also seemed that there was no doubt about the legitimacy of the convocation.

[*Latin ed. p. 132*]

132. DISPUTATION ON THE VALIDITY OF THE CHAPTER. The rights of the priest Anthony. The defender insists that four things are necessary in law for a chapter to be validly held: 1. that the chapter be legitimately convened; 2. that all those who have the right to participate be summoned; 3. that the business of the chapter be properly conducted; 4. and finally, that the majority express their consent. He maintains that all these conditions were clearly observed in the matter at hand. Indeed, the convocation of the chapter, as the Bishop states, was carried out according to established procedures; and the chapter, he argues, was legitimately convened, if the convocation was carried out according to custom, as Pignatelli teaches in volume 1, section 34. This becomes even clearer from the very act of the chapter itself, from which it is also apparent that another of the required conditions was fulfilled. For it is explicitly stated that the Archpriest was summoned, and that prior notice was given to each Canon by our Sacristan. Therefore, he concludes, there is no room for doubt regarding the observance of the first and second conditions. Furthermore, he contends that there is no reason to doubt the third and fourth. Indeed, the very record of the session shows that the purpose of the convocation was to allow for free deliberation through secret ballots, of which six, out of eleven, were favorable, and five were opposed to the proposition. He further argues that this cannot be undermined by the fact that one of the Canons was

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not summoned. For this Canon, suffering from chronic infirmity, has been bedridden for many years, and neither is accustomed to nor able to participate in chapters. Therefore, he contends, his absence, even if it occurred through the fault of the Sacristan, cannot invalidate the act of the chapter, especially since his presence would have been superfluous and useless. Therefore, having considered all these points, he maintains that there is no reason to doubt the validity of the chapter in question.

[*Latin ed. p. 133*]

CONCERNING THE VALIDITY OF CHAPTER 433, and consequently, the decree of the Pro-Vicar, it is necessary to insist on this second part of the conclusion, because the Pro-Vicar, as a part and judge in the present controversy, must be considered. For, having attended the canonical chapter, he gave his vote, and then, without any special mandate, he annulled the session held, which is something so absurd that no one fails to see it. Furthermore, the disposition of the decree is such that it calls for a new chapter to be convened; but according to the decrees of Trent (Tridentini) in session 25, chapter 6, concerning reforms, it is not within the power of the General Vicar to convene the chapter in the absence of the Bishop, but this right must be exercised by those of the chapter to whom this right belongs, either by law or by custom.

WHAT IS OPPOSED TO FATHER ANTONIO.

As far as this kind of question is concerned, it seems that a canonical chapter should be held. Indeed, the opponent himself admits that a chapter can be legitimately convened when, among other requirements, the convocation is made according to custom. But the customs observed in the Church of T. are shown by the very constitutions of that Church in chapter 13, part 1, where it is stated: "The custom remains firm, by which it is established that the chapter be convened by the Archpriest... the evening before, a signal of the celebration of the chapter shall be given by the sound of bells, and the sacristan shall remind each of the canons individually." Now, it is true that each of the canons was not reminded by the sacristan, as he himself testifies, saying that he omitted to remind two canons, and that he was punished by the chapter. Therefore, since the convocation of the chapter was not made according to custom, and since the canons who were not called cannot act without contempt, and thus the resolution is invalid, as stated in chapter 28 and chapter 42 of the De electione Reiff. Ius. canon. title, De iis quae fiunt a maiori parte Cap. n. 12, Schmalg., ibid. title, n. 10, it seems not only that the aforementioned canonical session was invalid, but that it was legitimately annulled by the legitimate superior. Furthermore, two of those invited were not canons, contrary to the prescriptions of the

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constitutions.

[*Latin ed. p. 134*]

134 CONCERNING THE VALIDITY OF CHAPTER SESSIONS. Wherefore, in the form of convocation, a fault existed; although only one [member] was present. Another, even if infirm, ought to be invited, not indeed to participate in the Chapter, but so that he might designate a proxy, or give his vote at home to scrutineers who come to him. Thus Reiff expressly states, in the aforementioned passage, title on elections, no. 191: "Even the votes of such infirm individuals ought to be ascertained... Such an infirm individual can either appoint a proxy, who will choose [on his behalf], or, if he prefers, give his own vote; and in this latter case, the scrutineers ought to come to him and receive his vote." And so Schmalg writes; *De electione*, no. 27; Piring, *ibid.*, title, no. 146, and others generally. Nevertheless, this is not sufficient. The Constitutions, in the aforementioned passage, prescribe that it is necessary "that the Chapter be summoned in writing three days beforehand," and that the matter to be discussed be expressed... unless prudence dictates silence regarding the matter to be addressed, in which case it should be expressed generally. In fact, however, the Chapters enact decrees, and in neither a general nor a specific manner, was the matter to be discussed in the Chapter made manifest. However, even if we were to assume, contrary to fact, that that session could validly be sustained, it would nonetheless be of no benefit to the cause of the priest Anthony. For it is well known in law that resolutions once adopted in a Chapter, even if valid, can nevertheless be changed, corrected, and varied, provided that the same solemnity is observed in correcting them as was observed in establishing them, as the Sacred Congregation responded in the Epistola et Regulamentis concerning Ceneten, March 11, 1615, to the fifth question, as testified by Monacelli in his formulary, part 1, title 5, form 2, no. 35. What happened in this case is attested by the very act of the Chapter of June 29, 1879, which states that the Chapter was convened by the Archpriest, after prior notification was given to each Canon by our sacristan. Therefore, if that resolution was legitimately revoked by a subsequent resolution issued by the Chapter, not only would the validity of the controversial session not benefit the cause of the priest Anthony, but even if it were valid, it would be null and void. After these considerations, the Most Reverend Fathers were asked to explain the following:

[*Latin ed. p. 135*]

ON THE VALIDITY OF CHAPTER 132.

Question: Does the session of the Chapter held on June 26, 1879, possess validity, so that the decree of the Pro-Vicar General may be declared invalid in the case?

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Resolution: The Sacred Council, having considered the matter, decided on August 1, 1880, that the following should be answered: Affirmative, in all respects.

Here are the grounds:

I. Chapters have a corporate nature: hence, their actions are explained socially, or, as it is commonly said, capitularly, in assemblies; to which all should be invited, so that they may be considered legitimately assembled.

II. The right to convene a Chapter belongs to the president, or to the highest dignity of the Chapter; which may vary according to local custom, and the decree of erection of the Chapter (1).

III. According to what is decreed by the Council of Trent, Session 25, chapter 6, the Vicar of the Bishop, even with the consent of the Bishop, cannot convene a Chapter, nor can he prevent its convocation.

IV. Since all canons must be present at the Chapter assemblies, lest the resolutions adopted be rendered invalid; therefore, even if one of those summoned has not been summoned or has not been present, the acts of the Chapter may be declared invalid, if he objects and proves that he was disregarded or not invited.

V. The absence of a canon, due to the fault of the sacristan, does not appear to be a sufficient cause to invalidate the act of the Chapter; because, of two who were not summoned, one was present at the Chapter session, while the other was detained by a chronic infirmity, and does not usually or is not able to attend Chapters.

(1) Whatever name is given to the highest dignity after the Bishop, that is the president of the Chapter, and it belongs to him to convene the Chapter. There is great diversity among Chapters in this regard: so that in some Chapters the highest dignity is held by the Archdeacon, in others by the Praepositus, in others by the Decanus, in others by the Primicerius.

[*Latin ed. p. 136*]

136 PRECEDENTS AND RULES OF DEFERENCE C & U C M, August 14, 1880. SUMMARY OF THE CASE. The Bishop P. held a diocesan synod, and its decrees were solemnly promulgated on September 12, 1878. In its Chapter I, Article 6, number 2, concerning precedents in ecclesiastical functions, it stated: "In ecclesiastical functions, that is, in those in which one must appear with some sacred vestment, the Prefects always have precedence; next come the Archpriests, then the Rectors, and finally the coadjutors, with promotion within their ranks being observed. And if it should be necessary for the clergy to convene by parishes, the order in which the parishes are listed in the clerical register shall be observed." Furthermore, noting that it was contrary to the rubrics and various resolutions of the Holy Roman Church that, in processions in which the Cathedral Chapter and the city clergy participate, not only the Cathedral Cross but also other

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crosses are raised, namely the Cross of the Seminary, under which its students proceed, and the Cross of the Prefecture, under which the remaining city clergy are gathered, the Bishop, moved by pastoral concern, sought to eliminate this abuse, invoking the Ceremonial regulations, which in book 2, chapter 33, number 5, prescribe the following order in processions: "First, the minister shall carry the Cross of the Cathedral Church; then, if there are clergy of the Seminary present, and after them, the Curates of the parish churches, then the churches of the collegiate body, and finally, the clergy of the Cathedral Church." Against these dispositions of the Bishop, the Prefect Saint Michael rose up, maintaining that, after the Prefect of the Cathedral, he should always have precedence over the other city Prefects, as being of higher dignity, among whom only the dignity of citizenship is found.

[*Latin ed. p. 137*]

PRECEDENCE 137. The order must be observed; then, it is argued that it is just to elevate the Cross in the general processions, to which the Cathedral Chapter participates, deriving its rights from certain episcopal decrees, and especially from the decree of the Bishop of Rubeisan in 1566, in which it is decreed: that the Rectors of Collegiate Churches must proceed according to the order of their promotions to rectories, except for the Rector of St. Michael's, who will perpetually hold the first place among the Rectors of the Collegiate Churches.

A SYNOPTIC DISCUSSION: WHAT IS OPPOSED TO THE PAROCHIAL VICAR OF ST. MICHAEL'S. There is no doubt, Reverend Father, that the Parochial Vicar of St. Michael's, when he proceeds with the clergy of his church, must precede the other Rectors, not separately participating, but with the clergy of his parish; this is due to him by right and merit, after the Cathedral Church, both by reason of antiquity and by reason of the privileges, although diminished, with which the Church of St. Michael's still enjoys. This is not denied by the Bishop; indeed, he expressly confers this honor upon the Parochial Vicar of St. Michael's in the Synod, Chapter 3, number 2, article: "If it should be necessary to convene the clergy from the parishes, each parish should convene in the order in which they are inscribed in the list of the clergy." In the diptych or table, the parish of St. Michael's holds the second place, after the Cathedral. But it is one thing to consider the parish with its accompanying clergy, and another thing to consider the Rectors individually. Certainly, the Church of St. Michael's always has precedence for the reasons previously explained; this precedence should be called real. But it cannot be categorically asserted regarding the Rector himself in relation to his brothers of equal rank. Among these, the order of the churches is not to be observed, but rather the order of promotion or seniority, as Ferraris teaches in precedence number 83: "For among soldiers of the same rank, he precedes who is

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older in service." (Z. 2. Cod. de Offic. Magistri off. et 4 de tironib). Hence, the synodal prescription does not appear to be objectionable.

[*Latin ed. p. 138*]

138 PRECEDENTS. However, the decree of the Bishop concerning the rubrics, from the year 1566, is of no benefit, because it clearly contradicts the common law, which establishes that among equals in dignity, the order of seniority must be observed, as stated in the Secret Consistory of Rome in Melitene, on May 9, 1709. Barbos, in the Apostolic Decrees, verb. preceding, no. 10, and therefore it should have no force or validity, according to what is stated by Benedict XIV, book 1, chapter 1, no. 1. Furthermore, even if it were to be said that episcopal decrees are to be maintained, because the matter of the custody of privileges and the judgment is entrusted to the Ordinary, this would not be of any benefit to the parish of Saint Michael. For, since the current Bishop possesses the same power as his predecessors, nothing prevents him from abolishing and repealing this law for a later generation; indeed, it is certainly known that every matter, by the causes through which it arises, is also dissolved, as stated in L. 56 ff. de Regul. Iur., and in a conflict of laws, the later law prevails, according to the words, "The later law abrogates the earlier law," L. 1 ff. ad leg. Aquil. Nor can such decrees be considered valid by custom; for, as the Ordinary stated, customs are things that are doubtful, separated, and singular; against which stand clearer, certain, and more recent actions. But even if custom were clearly demonstrated, it should not therefore be considered valid and of no force, for a synodal constitution, because since custom cannot have greater force than the law, it should already be considered abrogated by the aforementioned diocesan law, especially since, due to increasing abuses and changed circumstances, it can no longer be maintained as rational, but rather has become corrupt. This is all the more true, considering that in matters of precedence, the greatest power is granted to the Bishops by the Tridentine Council, session 25, chapter 13. However, it seems to be based on a weak foundation that the parish priest argued, in the second part of the doubt, that in processions, where the clergy participates indistinctly, not only the cathedral clergy, but also the Prefect of Saint Michael, has the right to raise the cross, relying on the aforementioned decree of the Bishop concerning the rubrics: on the contrary, there is an explicit provision in the Ceremonial, book 2, chapter 33, no. 5, which states: "There... the first minister shall carry..."

[*Latin ed. p. 139*]

PRECEDENCE 139: The Cross of the Cathedral Church comes first, and then, if present, the clergy of the Seminary, and after them, the pastors of the parish churches, together with the cross-bearer of the Collegiate Church, and finally, the clergy of the Cathedral Church. To this, the decrees

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of the Sacred Congregation of Rites are also consonant, which prescribe that when the Chapter of the Cathedral participates in processions, only one Cross should be carried, namely, that of the Cathedral Church. Thus, the Sacred Roman Congregation decreed in Piacenza on May 22, 1632, and more precisely in Fanano on July 21, 1645. Ferraris, *De Veritate Crucis*, n. 14. Nor does a custom lasting more than a century have any validity, to which the parish of Saint Michael adheres; for a custom contrary to the Ceremonial, is called an abuse by the Sacred Congregation in a decree of Corduba on April 3, 1688. And Innocent XIII, in his Apostolic Constitution addressed to the Ordinary, granted a broad faculty to abolish such customs: "Bishops must entirely remove all abuses which have occurred in secular or regular churches contrary to the prescriptions of the Ceremonial." And it is easily demonstrated that the custom upon which the Prior of Saint Michael bases his claim is to be disapproved, both because of changed circumstances, and because of abuses derived from it, and other inconveniences, as is evident from the information presented by the Bishop.

THINGS THAT SEEM TO FAVOR THE PARISH PRIEST OF SAINT MICHAEL. The following points are offered in favor of this parish:

When judging questions of precedence among parishes, the nobility or prerogative of the parish church must be considered, according to decisions of the Sacred Congregation of Rites, as is stated in a decree of Asti on March 21, 1605, reported by Ferraris, *De Praecedentia*, n. 8. More precisely, this doctrine is explained in Ascoli on May 10, 1642, in which the Sacred Congregation decreed: "In matters of precedence among parishes, the antiquity and dignity of the parish church must be considered, not the persons of the pastors themselves." And rightly so, for all dignity and prerogative in the pastor, as such, derives from the church which he represents and to which he is joined in spiritual union. This is true in law; in fact, it cannot be doubted that the church of Saint Michael...

[*Latin ed. p. 140*]

140. The parish church of Saint Michael should hold precedence over other parochial churches in Lucca, due to its antiquity: for its origins extend back to the seventh century, while the establishment of other churches is attributed to a later period. It would be lengthy to speak of the dignity and privileges of the Church. And concerning dignity, it is sufficient to recall, from the most ancient ordinances of the Ordinaries, that the parish of Saint Michael and its pastor have always claimed the first place, after the Cathedral. As for privileges, besides many others, the Rector of Saint Michael possesses the right to sit to the left of the Bishop in the diocesan synod. Therefore, since the antiquity and dignity of the parish church of Saint Michael, compared to other parochial churches, is certainly more certain through the aforementioned teaching of the Most Holy Roman Church, its pastor ought to precede the other confreres, both in processions and in other as-

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semblies. This conclusion seems even more worthy of consideration, if it is explained that the possession and custom existing for the parish of Saint Michael date back to the year 1403; and although it was interrupted during the time of Hyppo liti de Rubeis due to disagreements and quarrels among the clergy, nevertheless, from that age, when the aforementioned decree was issued, until the present time, it has not been proven to have been interrupted or abandoned. Indeed, how much attention should be given to matters of precedence, no one can fail to see. Custom in this matter makes both sides equal, as noted by the Rota in recent judgments, paragraph 18, decision 78, number 6, and decision 232, number 2, before Olivano, Pignat, volume 6, consultation 67, number 5; see also the Sacred Council of Trent, Congregation, in Acheruntino, precedence, August 23, 1870, §. Moreover, although this observance may seem contrary to the disposition of the law, it is said to provide a rule in establishing precedence, even if it prefers the less worthy to the more worthy, as noted by Cardinal De Luca, annotations to the Council of Trent, discourse 38, number 6, and on the Regulars, discourse 19, number 2, Sacred Congregation of Councils, in Casalen, precedence, May 25, 1817, §. This first point. After these considerations, it would be useless to attempt to undermine the rights of the pastor of Saint Michael through a synodal prescription of the current Bishop.

[*Latin ed. p. 141*]

PRECEDENTS 141: This matter should be condemned, for innovations are introduced only with scandal, as Saint Augustine observes in his letter 10, chapter 5, to Inquisitius, namely, that the very change of custom, which is helpful by its utility, is disturbed by novelty. And Benedict XIV, in *De Synodo Diocesana*, book 11, chapter 5, warns that the synodal constitution, which seeks to abolish a custom already existing in the diocese, does not escape the stigma of novelty. Therefore, the synodal law, insofar as it introduces novelty and is prejudicial to the right of a third party, seems to be of no effect. Furthermore, in favor of the parish of Saint Michael, it should also be maintained that he is entitled to carry the cross in general processions. For a custom contrary to the prescriptions of the Ceremonial will certainly be a corruption when the divine worship suffers detriment. However, no prejudice is done to him if another cross is raised behind the Cathedral; for thus far, no scandal has been generated among the people, and indeed, the opposite might perhaps occur if a change were made. Therefore, the parish of Saint Michael should be maintained in his possession, not only because this custom is longstanding, but also because it is supported by episcopal decrees. With these precedents considered, the following proposition was to be decided: Whether the synodal decree should be upheld, or rather, whether it is established by the law of precedent and the right to carry the cross in favor of the parish of Saint Michael in this case.

RESOLUTION. The Sacred Congregation, after deliberation on August

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14, 1880, judged that the following should be answered: The decree should be upheld with regard to the right to carry the cross, but not with regard to the matter of precedence.

FROM WHICH IT IS UNDERSTOOD: I. In resolving questions of precedence between parishes, greater attention should be given to the dignity and antiquity of the parish church itself, rather than to the persons of the pastors.

[*Latin ed. p. 142*]

142. All dignity and prerogative in a parish priest, considered as such, are derived from the Church which he represents, to which he is spiritually bound.

143. It cannot be doubted that the Prelate Michael surpasses other Prelates in dignity, equity, and privileges, and that, moreover, the Prelate is assisted by possessions and customs.

144. According to the *Caeremoniale Episcoporum*, to which universal law applies, and according to the resolutions of the Holy Congregation of Rites, the only cross of the Cathedral Church must be removed whenever the Chapter of the Cathedral participates in processions.

145. By the same Holy Congregation of Rites, the custom of appealing against the *Caeremoniale* is considered an abuse, and must be entirely removed by the local Ordinaries, according to the Apostolic Constitution of Benedict XIII.

146. Only those customs which are truly memorable, and otherwise praiseworthy, are to be considered preserved, even if they are contrary to the *Caeremoniale*, because the Pontifical Constitutions, while generally abolishing all customs, do not expressly mention those which are merely memorable (1).

(1) Clement VII, through the efforts of most learned men, first ordered the *Caeremoniale Episcoporum* for the entire Church, in the year 1600. It was subsequently corrected by Innocent X, and finally by Benedict XIII, a most learned expert in sacred rites. The Constitutions issued by these three Popes contain no mention whatsoever regarding memorable, albeit praiseworthy, customs, even if they are contrary to the *Caeremoniale*. Therefore, according to accepted legal principles, such customs should be considered preserved, unless otherwise declared. And the Holy Congregation of Rites has issued several declarations in which the aforementioned memorable customs are expressly preserved. Thus, in one instance in Hispaniae, concerning Gardellini, on June 11, 1605, under number 266, it was resolved: "Because in the Churches of the Kingdoms of Hispaniae, many things are done in a different manner than what is declared and ordered in the *Caeremoniale Episcoporum*, partly due to Apostolic concessions, partly due to the variety of ministers, and partly also due to the location of the altar and

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the choir, at the request and for the benefit of all the Churches in the Kingdoms of Hispaniae, the Holy Congregation of Rites has been petitioned to declare that the aforementioned *Caeremoniale Episcoporum*, recently published, does not abolish the memorable customs of the Churches." The same Holy Congregation, as it has often done in response to the requests of particular places, now, at the request of all the Churches in the Kingdoms of Hispaniae, declared that the aforementioned *Caeremoniale* does not abolish the memorable and praiseworthy customs.

[*Latin ed. p. 143*]

PRECEDENTS 143 V II. The custom, observed in some places, of raising more crosses during processions, although long-standing, is not without its drawbacks; indeed, according to the Bishop, it provides a reason for numerous inconveniences and abuses; therefore, it seems to have been rejected by the Sacred Congregation. To the Bishops of Europe, the following is granted: the facility of extending the Jubilee within their respective Dioceses until the eighth day, inclusive, of the coming month of December. As the extraordinary Jubilee, proclaimed by the Most Holy Lord, our Pope Leo XIII, to the entire Catholic world through the Letters *Militans Iesu Christi Ecclesia* on the eleventh day of last March, approaches its end, several places in Europe have offered prayers to the same Most Holy Lord, requesting the extension of this very Jubilee, especially because it would provide the sacred ministers of the Church with time to visit the various and often disparate and difficult Dioceses and regions, and to encourage the faithful, especially farmers, to take advantage of the Jubilee's benefits through the preaching of the Word of God and opportune spiritual exercises, so that they may attain salvation and the remission of sins. These prayers, graciously received by the Most Holy Lord, He has deigned to entrust to this Sacred Penitentiary, so that it may grant to the Ordinary authorities in Europe the faculty of extending the Jubilee until the eighth day, inclusive, of the coming month of December, the sacred feast of the Immaculate Conception of the Most Holy Virgin. Therefore, this Sacred Penitentiary, by express Apostolic authority, grants to all and each of the Ordinary authorities in Europe the faculty to extend the present Jubilee within their respective Dioceses and for the flock entrusted to them, until the eighth day, inclusive, of the coming month of December of the present year, observing in all other respects the established form and tenor.

[*Latin ed. p. 144*]

144 LETTERS concerning the aforementioned Letters – the Militant Church of Jesus Christ – notwithstanding any and all contrary matters, even those deserving of special mention. Given in Rome, on the fifth day of the month of Penance, July, in the year 1881. (ALOISIUS CARD. BILK), Prefect. Reverend Father Hippolytus Can. Palombi, Secretary. FROM THE

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HOLY CONGREGATION FOR RITES: A WARNING regarding the use of sacred vestments made of cotton, linen, or wool. WARNING – LATIN VERSION: Although the Holy Congregation for Rites has repeatedly declared the use of chasubles and other similar sacred vestments, made of cotton or linen, or even wool, to be illicit, nevertheless, some manufacturers of such fabrics are selling such vestments, as if they were now permitted by the same Holy Congregation. Therefore, in order to remove any false opinion on such an important matter, the Reverend Ordinary Diocesan authorities are warned that the decrees already issued on this subject by the same Holy Congregation remain in full force and effect, and that there is no new regulation that has in any way modified them. From the Secretariat of the Holy Congregation for Rites, July 28, 1881. PLACIDO HALLI, Secretary. Although the Holy Congregation for Rites has often declared the use of chasubles, and other similar sacred vestments made of cotton or linen, or even wool, to be illicit; nevertheless, some manufacturers of these fabrics sell such vestments, as if they were now permitted by the same Holy Congregation. Therefore, in order to remove all possible false opinions on such a serious matter, the Reverend Ordinary Diocesan authorities are warned that the decrees already issued, concerning this matter, by the same Holy Congregation, remain in full force and vigor, and that there does not exist any recent regulation that has in any way modified them. From the Secretariat of the Holy Congregation for Rites, on July 28, 1881. PLACIDO HALLI, Secretary.

[*Latin ed. p. 145*]

LETTERS FROM HIS HOLINESS, POPE LEO XIII, ADDRESSED TO THE ARCHBISHOP OF MECHLIN AND TO ALL THE BISHOPS OF BELGIUM.

To Our Beloved Son, Victor Augustus, Most Reverend Cardinal Deschamps, Archbishop of Mechlin, and to all the Venerable Brothers, the Bishops of Belgium.

LEO, POPE XIII. To Our Beloved Sons and Venerable Brothers, health and the Apostolic Blessing.

Although many harmful things have happened in recent times in Belgium concerning Catholic affairs, which have greatly saddened Our heart, We have nevertheless found solace and comfort in the many testimonies of steadfast love and faith that the Catholics of Belgium have shown Us, whenever the opportunity presented itself.

Above all, We are greatly pleased, and We are pleased, by your excellent will and zeal, which you have shown towards Us, in order that the Christian people entrusted to you may persevere in the sincerity and unity of the Catholic faith, and that their love for the Church and for Christ's Vicar may grow daily.

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We wish to commend you greatly for this, and for the diligence with which you strive for the instruction of young people, taking care that in the first place, the doctrine of religion is generously taught to the young in schools. Nor do you neglect with less care to provide for Christian education in gymnasiums and lyceums, and even in the University of Louvain.

Nevertheless, We cannot allow Ourselves to be tranquil or secure when We see the danger that seems to exist among Catholics in Belgium, of creating discord, and of distracting them from opposing studies.

Furthermore, it is superfluous here to mention what have been the causes, occasions, and incitements of past and recent dissensions, and from which, it seemed, less was to be expected: these things, Our Beloved Sons and Venerable Brothers, you understand and deplore more than others, since you know that there has never been a time when the need to reconcile and preserve harmony among all Catholics was so great, as in this Our time, when the enemies of the Christian name attack the Church with united force.

Therefore, concerned about this, We warn you that some controversies concerning matters of public law, which often stir up the minds of people among you, should not be encouraged.

[*Latin ed. p. 146*]

446 Letters demand an opportunity to bring recent forms of the republic, and new laws, as they say, into conformity with the norms of Catholic doctrine. Indeed, We ourselves, above all, most earnestly desire that human society be ordered in a Christian manner, and that all orders of the state be permeated and pervaded by the divine power of Christ. We immediately demonstrated this intention from the very beginning of Our Pontificate, through publicly published documents; especially through Encyclical Letters, which We promulgated against the errors of socialism, and more recently concerning the political principle. However, all Catholics, if they truly wish to work for the common good, must have before their eyes, and faithfully follow, a considered method of acting, which the Church is accustomed to employ in these matters: for although the Church steadfastly defends the integrity of heavenly doctrines and the principles of justice, and most strongly insists that these principles should govern both private actions and public institutions and customs; nevertheless, she takes into account the proper measure of things, places, and times; and often, as is customary in human affairs, she is compelled to tolerate certain evils for a time, which cannot be removed without opening the way to even greater evils and disturbances. Furthermore, in controversies, care must be taken that the limits prescribed by the laws of equity and charity are not transgressed; nor should men who are otherwise devoted to the doctrines of the Church, especially those who excel in dignity and authority within the Church, be rashly accused or brought into suspicion. We are saddened that

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this has happened to you, beloved son, who preside over the Archdiocese of Mechlin, and who, because of your outstanding merits for the Church and your zeal for defending Catholic doctrine, were deemed worthy by Our predecessor, Pope Pius IX, of being included in the College of Cardinals. It is clear of itself that to call anyone to account for false accusations is to weaken the bonds of mutual charity, and to inflict injury upon those whom the Holy Spirit has placed to govern the Church of God; therefore, We most earnestly urge that all Catholics exercise the utmost restraint, and We gravely warn them. Let it be known to all that it is the duty of the Apostolic See and the Roman Pontiff, to whom access is always open to all, to defend Catholic truths everywhere, and to take care that nothing creeps in or is spread within the Church that might be contrary to doctrine concerning faith and morals, or that appears to diverge from it. As for you, beloved son, and Venerable Brothers, take the utmost care that all learned men, and especially those to whom the task of educating the young has been entrusted by you, are...

[*Latin ed. p. 147*]

LETTERS 147: Let there be one mind and one judgment in matters, in which the authority of the Apostolic See does not allow for the freedom to dissent. In those matters which are freely permitted in the discussions of wise men, so that, with your encouragement and urging, talents may be exercised, so that the diversity of opinions may not break the unity of souls and the harmony of wills. With regard to this, Our Predecessor of immortal memory, Pope Benedict XIV, handed down precepts full of wisdom and gravity to learned men in the Constitution "Sollicita et provida"; indeed, He also presented the example of Saint Thomas Aquinas, who always uses a peaceful style and a grave form of speech, not only when He teaches and demonstrates the truth with arguments, but also when He presses and challenges opponents. It pleases Us to commend these same precepts of Our Predecessor again to wise men, and also to present the same example, from which they may not only learn how to deal with opponents, but also what kind of doctrine ought to be taught and cultivated in philosophical and theological disciplines. We have not once, beloved Sons and Venerable Brothers, indicated to you how much We desire that the wisdom of Saint Thomas be restored in Catholic schools and held in the highest honor everywhere. We have also been the authors of establishing a higher philosophy professorship in the Louvain Academy, according to the mind of St. Thomas; in this matter, as in all others, We have found you most eager to obey Our desires and to fulfill Our will. Therefore, persevere diligently in what you have begun, and carefully take care that in that same Academy, abundant sources of Christian philosophy, flowing from the works of St. Thomas Aquinas, may be opened widely and copiously to the audience, and may be derived for the benefit of all other disciplines. In this matter, We

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shall never allow Our counsel or assistance to be lacking to you, whenever it is needed. In the meantime, We implore God, who is the source of wisdom and the author of peace and love, to grant you timely help for your needs, and We pray that the abundance of heavenly gifts may be granted to all. Of these things, as a pledge of Our singular benevolence, We impart to you, beloved Sons and Venerable Brothers, together with the entire clergy and the people entrusted to your care, Our Apostolic Blessing, earnestly granted in the Lord. Given in Rome, at St. Peter's, on the 3rd day of August, 1881. In the fourth year of Our Pontificate.

[*Latin ed. p. 148*]

148 FROM THE HOLY CONGREGATION OF THE COUNCIL OF MATRIMONY. On July 1st, 1880, a summary of the case was presented. In the year 1870, before the economist and curate of the Church of B., Peter, aged 36 years, and Rosa, aged 18 years, were married. After the celebration of the marriage, each returned to their own home and homeland, because the spouses, by mutual consent and with the advice of their parents, had decided to postpone their cohabitation until the month of August of the same year, for the sake of expediency. But afterwards, neither cohabitation nor the consummation of the marriage took place. Therefore, on August 6th, 1871, Rosa presented a petition to the Curia, requesting that the marriage be declared invalid due to a lack of consent, alleging that she had been deceived by both Peter and her curate, because she had believed, until then, that Peter was 26 years old, whereas in truth, Peter had completed his 37th year. This condition, she stated, was imposed by the petitioner as essential; without which, she would never have entered into marriage with the aforementioned Peter. The Vicar Capitular did not proceed with the case: several witnesses were heard, and the priest who had blessed the marriage testified that no condition had been expressed. Furthermore, another priest, who had taken up the defense of the woman, declared himself defeated and withdrew from that office. The Vicar himself did not complete the case, and did not render any judgment; because he was morally certain that Rosa would not obtain a solution to her marital problem.

[*Latin ed. p. 149*]

MATRIMONII 149. Such arguments can be both subtle and effective. But Rosa, on August 24th of that same year, entered into a civil marriage with a man named Vincent, from whom she bore three children, of whom only one survived. These things are recounted by the Bishop in a suppliant letter, presented to the Supreme Pontiff, dated July 19, 1879, in which he humbly requested that the marriage, which was valid but not consummated, be dissolved by the authority of the Pontiff, in order to remove the occasion of public scandal. On the same day, the response was: "To the aforementioned Bishop, who, after a written petition from the woman,

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shall conduct a process both concerning the subsequent consummation of the marriage, as well as concerning the causes for a dispensation, observing the form prescribed by the Constitutions of Pope Benedict XIV, with the faculty of also delegating, observing the necessary precautions for the examination of the parties, to the extent that one or both may be absent from the diocese, he shall report the results and transmit the process to the Sacred Congregation." Thus, a double process was conducted, one in the diocese of the woman and another in the diocese of the man; and in both places, sworn advocates presented their arguments, and likewise, seventy-seven sworn witnesses, besides the spouses themselves, as well as relatives and close acquaintances, were heard before the advocates themselves; and three other women, brought forward by Rosa, were questioned by the diligent advocate. On October 7, 1879, the Bishop presented this double process to the Sacred Congregation. And when Rosa, through the testimony of her own Bishop, demonstrated her poverty, on the hearing of January 12, 1880, the Holy Father benignly approved that the cause be presented before the Sacred Congregation of Economical Affairs, with the opinion of a theologian and a canonist, and with the observations of the advocate for the marriage bond, by virtue of his office, a summary of which we provide. OPINION OF THE THEOLOGIAN. After having diligently examined the acts of the process, the theologian, in his judgment, declared that the marriage of Peter with Rosa had been valid, and also that it was valid but not consummated; and that there were reasons and arguments by which a dispensation could be lawfully obtained from the Apostolic See.

[*Latin ed. p. 150*]

150. To demonstrate that a marriage was validly contracted, it must be shown that there was no impediment that would invalidate it; that neither party interposed anything that would strengthen their wills or remove them from the purpose of marriage; that no doubt troubled their minds; that no fear disturbed their hearts. Furthermore, the theologian states that the consent of the contracting parties was freely expressed before the proper parish priest and two witnesses. Therefore, for the sake of the sacrament, this union must be maintained, according to the Apostle in 1 Corinthians 7: "But to the married I give this commandment, not I, but the Lord: that the wife should not separate herself from her husband; but if she does separate, let her remain unmarried, or else let her be reconciled to her husband. And let not the husband divorce his wife." However, a woman, after having given her consent, considered retracting it, as taught by Eugene IV in the decree for the Armenians, claiming that she had given it conditionally, namely, if Peter were truly 36 years old. In mutual consent, the efficient cause of marriage is indeed found; but this consent regards the qualities of the person with whom one wishes to contract (1). And therefore, an error or deceit concerning the qualities of a person does

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not invalidate the marriage, unless it concerns the essential nature of the person, or unless the consent is subject to a condition without which the marriage cannot be validly contracted. In such a case, if the condition is lacking, the conditional agreement is void, that is, the consent is lacking. In our case, it could not be determined from the proceedings that the consent was conditional; since all the witnesses did not mention this condition (2). (1) Generally speaking, an error or deceit concerning the qualities of a person does not invalidate the consent, because in those things that constitute an irrevocable state by their very nature, such as marriage, the will consents absolutely and independently of other conditions, except for those that are essential to the contract itself. "Therefore, Schmalzgrueber, in book 4, title 1, paragraph 447, says: 'If such an error were to invalidate a marriage, many marriages would be dissolved, to the great detriment of offspring, of the state, and to a public scandal; since an error concerning a quality often occurs in contracts.'" (2) After the marriage had begun, Rose learned from a gossiping woman the true age of Peter. Therefore, Rose was in error, not in doubt or in any hesitation.

[*Latin ed. p. 151*]

Regarding the marriage: It cannot be proven that this marriage was consummated, based on the appearance of the woman's body, and because, although another man has fathered her three children. Therefore, one must rather refer to another sign, namely, the familiarity preceding the marriage celebration, and the demonstration of ardent love. But these signs are lacking in this case, therefore, it is to be argued that Rosa persevered in a valid but unconsummated marriage. The testimonies of Peter and Rosa, although given separately, confirm this; and this is corroborated by all the witnesses. For, while the signs of ardent love and all familiarity were absent during the betrothal, they never cohabited, nor did they ever remain alone, after the marriage. The grave discord that now separates the parties, and the scandal caused by the woman, appear to be sufficient and just grounds for obtaining a dispensation in this case. *Rota decis. 86 n. 17.*

OPINION OF THE CANONIST. The validity of the marriage should not be questioned on account of an error concerning age, says the Canonist, because the condition, although present, was not expressly added during the contracting of the marriage by the young woman. The Bishop speaks of the lie contained in this condition, and the matter itself teaches from where this pretense arose. For, when Peter was behaving coldly, she began to think about an invalid marriage, because of the man's age, in order to grant indulgence to the other, to whom she had already devoted her heart.

The Canonist continues, saying that three things are required for a pontifical dispensation, whereby the bond of a valid marriage is dissolved: namely, proof of the unconsummated marriage; then, discord, implacable hatred, and animosity; finally, the supplications of both spouses. *Fagnan,

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in cap. *De parte de convers. coniug.* n. 26.* All of these are present in this case; to which are added the cessation of scandal, and the children born from concubinage.

However, having stated these preliminaries, the Canonist asks whether there is such a necessity in this case, whether the cause is so just and of such importance, that it would be fitting for the Holy See to grant permission for the dissolution of the sacred bond: and therefore, there was a moral impossibility of imposing a condition without which the marriage would not have been contracted. The imposition of a condition is the revelation of a doubt; but when there is no doubt, the imposition of a condition does not follow.

[*Latin ed. p. 152*]

152 Regarding marriages, someone requested a dispensation; and he replied that it did not seem fitting. For the Pontiffs possess the power to dissolve marriages for the good of the Church, to avert grave harm to the Church, or to prevent quarrels and bloodshed among families, which often arise from ill-advised marriages. In this matter, there is no room for fear. Rather, a greater cause for scandal seems to be found in the admiration with which these new marriages would be regarded by the inhabitants of the town in which the woman resides. For ten years ago, we were asked to put an end to a scandal, perhaps causing greater offense to the people: and it is demanded that adulterous marriages, which had already been justly condemned by the censure of excommunication and public reprobation, be consecrated by the Church through the breaking of the sacred bond of marriage (1). Such ecclesiastical discipline is not what prevents scandals from arising in the Church! Will the Apostolic See cease to prevent scandals, while at the same time, by concealing crimes, it rewards an impudent woman who has defiled a sacrament with adultery, who has mocked the laws of the Church before civil, ethnic, and even infidel authorities, and who has plotted the death of her husband (2)? No one is ignorant of the harshness of the times: but there are those who doubt whether the same judgment should be applied to a common woman, from a rural village, scarcely known, and to an adulterer, in prison (3). In Chapter [omitted], when it was asked of the Pontiff what should be decided concerning two adulterers who had, in this state, produced ten children. For a man, having a legitimate wife, habitually committed adultery with a slave girl. The man, having been summoned to justice, dismissed the adulteress; but afterwards, for ten years, he persisted in the same crime with the adulteress, begetting ten children. The Pontiff replied, "They must be completely separated, and after being assigned appropriate penance, perpetual continence must be imposed upon them." The multitude of children, rather than mitigating their crime, exacerbates it; the length of time does not diminish, but increases, the sin. Pope Leo decreed that no one should marry a woman

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who has been defiled by adultery; a marriage of this kind is detested, as both Pope Gregory and the Council of Trent have declared. Therefore, in this case, the woman should rightly be swiftly removed from the grace of the sacraments. (2) Thus, the woman pursued her husband with hatred, attempting to take his life through a plot, as is evident from the court proceedings.

[*Latin ed. p. 153*]

153. Does the marriage lack consummation, which perhaps might be permissible at times for the benefit of prominent men, or for the sake of maintaining peace in kingdoms? OBSERVATIONS OF THE DEFENDER OF THE HOLY BOND. He states that he cannot agree with the theologian and canonist regarding the alleged lack of consummation of this marriage, since this is not clearly established. Indeed, true counselors draw arguments in favor of the lack of consummation from the assertion of the spouses, confirmed by oath, from the testimony of seven witnesses, and from the fact that the spouses never had intercourse, and therefore could not have consummated the marriage. However, the assertion of the spouses alone, even if confirmed by oath, is not sufficient, because it is not free from collusion. The dispensation is sought for the woman, so that she may more freely live with her lover; it is sought for the man, in order to seek revenge for the crimes and offenses committed against him by the woman. And indeed, all teach that, in the absence of the aid of bodily inspection, the assertion of the spouses should not be immediately believed, unless it is confirmed by other evidence, that they have never been together after the marriage was ratified. But it is easily admitted that Peter and Rosanna were never together, whether at home, or in the countryside, or in any other place, and not only for a day, but not even for an hour, since there is no reason for such a long and prolonged separation. The woman gives this reason: this happened because there was an agreement between them, that the bridegroom would not bring her to his own house, unless she first rested from her rural labors. Even if this reason is accepted, does it necessarily follow that they could not have known each other carnally in the meantime? They were legitimate spouses, and although they claim not to have lived together, they could nevertheless enjoy the freedom that is permitted to spouses, by the best of rights. It is truly an error to assume that intercourse occurred simply from the possibility of carnal consummation, and therefore the dispensation should be denied. Even if a man and a woman, and witnesses, assert that the spouses have not been together in the same house for a period of months, their assertions do not appear to be conclusive, because they are not consistent.

[*Latin ed. p. 154*]

154. The Defender of Matrimony, moreover, maintained that a marriage,

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once given, and not merely promised, is not consummated, unless there is a cause for granting a dispensation, namely, the necessity of repairing scandals arising from the adulterous union of the woman. But this reason is entirely contrary to being favorable to a dispensation, as it would favor the wicked woman, as the Consul and canonist indicated. After these opinions and observations had been considered, the following question was proposed to be resolved: Whether one should consult with the Most Holy Fathers regarding a dispensation for a marriage that is valid, but not consummated, in this case.

RESOLUTION. The Sacred Council, after discussing the matter on September 11, 1880, decided to respond: It is not advisable.

FROM WHICH WE GATHER THE FOLLOWING:

I. Since marriage, by its very nature, is a firm and irrevocable state, generally, error and deceit do not undermine the validity and perpetuity of the same sacrament.

II. Consent, which is the efficient cause of marriage, regards the person, not its qualities; and the will of the contracting parties absolutely consents and independently of other conditions, except those which are of the substance of the same contract.

III. The woman certainly erred or was deceived concerning the virility, but since she had not doubted this beforehand, she was in a moral impossibility of imposing a condition without which she would not have contracted the marriage, because the imposition of a condition is a revelation of doubt, which was absent in this case.

IV. The power to dissolve a valid marriage is used by the Roman Pontiffs as a remedy for grave damages to be averted by the Church, to prevent quarrels and murders among families, which often arise from ill-omened marriages.

[*Latin ed. p. 155*]

ON MARRIAGES 15. And although any reason may seem insufficient, a most serious reason is required, so that the Pontiff may employ that authority which he commonly uses for the governance and good of the Church. 16. Therefore, it must be considered in practice whether the requested dispensation from the Apostolic See will contribute to the common good of the Church, or whether it will more heavily result in damage due to future scandals that it may generate. 17. Perhaps the grace of the dispensation was denied for fear that scandals would not cease, lest the Apostolic See appear to be bestowing benefits upon a common and impudent woman who has defiled the Sacrament through adultery and has treated the laws of the Church with contempt before the civil magistrate, and lest it seem that she is deriving advantage from her wickedness. Chapter VIII. We have

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understood the judgments. 18. Therefore, to the woman requesting the dispensation, it seemed that Alexander III gave the following response, as is permitted in Cap. 3 of *De Sponsa Duor*: "It is not permitted to a woman to marry another; and if she does marry, and even if carnal intercourse has followed, she must be separated from him; and in order to return to the first [marriage], she must be compelled by ecclesiastical decree."

ON MARRIAGES (1). On January 29, 1881. SUMMARY OF FACTS. Peter, aged 33, of the same place, offered himself as a suitor to Albina, who, at the beginning of the year 1873, became pregnant and gave birth to a girl, not without (1) This reason is found to be very serious because of the difficulties involved, which make the decision very difficult. Hence, it seems that the Holy Congregation acted prudently in judging that the marriage was not null, but rather declared it invalid based on the documents presented. Thus, it could happen that if other, more evident documents were presented, the same marriage could be declared null by the same Holy Congregation.

[*Latin ed. p. 156*]

156. Rumors of marriages spread throughout that region. The young woman, Albinus, had a father named Peter, although he had sometimes denied this, hesitating as to whether he should acknowledge himself as the father. There was also a certain Octavius, another lover of Albinus, who had already passed away. However, it is true, if credence is given to the extrajudicial testimony of the Parish Priest, that Peter was the cause of Albinus' pregnancy; for he recounts that, after Albinus gave birth, in order to somehow repair the scandal, and also to yield to the insistent demands of the woman's parents, he called for Peter and urged him to take Albinus as his wife, both for the sake of legitimizing the child and to fulfill a promise. Peter agreed, and, declaring the truth of the matter, added that he would take Albinus as his wife immediately, if his mother gave her consent. However, when the mother was called by the Parish Priest and refused to give her consent, Peter abruptly broke off all relations with Albinus.

Some time later, Peter began to desire Sabina, a woman suitable for marriage; and since she had been made pregnant by him, driven by the threats of her parents, either to enter into marriage within eight days, or to undergo the consequences of denunciation, she brought a case of attempted abortion before the civil tribunal, and finally, in order that she might be present the following day at the marriage, she went to the Parish Priest. But the Parish Priest persuaded her to delay, so that he might consult with his own Ordinary; from whom he requested, orally, a dispensation regarding the aforementioned impediment; which, as he himself said, he judged to be hidden, although it was hidden only formally, but not materially, and he obtained the dispensation orally. Therefore, the marriage, preceded by betrothal before the civil authority, took place on May 5, 1874, between

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Peter and Sabina, before the Church. About ten days after the celebrated "marriage," Sabina gave birth to a child, whom Peter acknowledged as his own, and gave his own name to, and who, a few days later, passed away.

After the marriage, Peter neither completed the civil ceremony, nor did he ever take Sabina into his house, although he admits that he knew her carnally again; indeed, after some time, he completely abandoned his wife.

[*Latin ed. p. 157*]

MATRIMONII 157 Since these things were so, and the hope of reconciliation had vanished, the Parish Priest doubted the validity of the marriage; therefore, in the year 1875, recourse was made to the Sacred Penitentiary, so that it might deem fit to decide, whether within the faculty granted by the same Bishops concerning hidden impediments to marriage, the power to dispense regarding a material impediment to marriage, which is publicly known, but formally hidden, is included, and the response issued was: It is not included. Soon after, as is reported, Petrus was instructed by a certain priest concerning the nullity of the aforementioned marriage, and on December 23, 1876, he brought the matter before the Curia, so that it might be declared null, both on account of fear and on account of the impediment of affinity. But as the process proceeded, it was limited to the second head only, and therefore the process concerning this head was concluded before the Episcopal Curia. After hearing the witnesses and the arguments presented by the Defender of the Bond, the Curia, considering all that had been presented in the case, and the resolution of the Sacred Penitentiary Apostolic, dated August 18, 1872, in Almeria (in which, concerning the question of whether Bishops can validly dispense from impediments to marriage that prevent their diocesans, joined only in civil marriage, when one of them is so gravely ill that he is at the point of death and requests the Sacrament of Marriage, the response was: concerning public impediments, the Bishop cannot dispense at all), declared that the marriage between Petrus and Sabina was not valid, on account of the impediment of affinity, arising from an illicit union. However, the Defender of the Bond appealed against this decision to the Sacred See; and it was granted that the case should be treated economically, with the opinions of a Theologian, a Canonist, and the observations of the Defender of the Bond. OPINION OF THE THEOLOGIAN. This person, having noted that there was nothing to reproach in the series of procedural acts, considered it necessary to observe the idea by which the entire series of acts is informed; since some responses of the Sacred Penitentiary appear to constitute the basis and norm of the entire process, and also...

[*Latin ed. p. 158*]

158. Regarding the marriage, the opinion of the Episcopal Curia. And because the responses of the Sacred Penitentiary clearly demonstrate that an

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impediment, materially public, and formally hidden, must be considered materially public; and consequently, the Bishop cannot, by virtue of the faculties he possesses from the Sacred Penitentiary itself, relax it; therefore, both the judge in this case, and the compiler of the procedural acts, were not concerned with the formal publicity of the impediment, and they only considered the investigation of its material publicity. From the procedural acts, it is established that there was a pre-nuptial impediment that was materially public; however, it is not established that it was also formally public; because it was not proven in the acts, although, with a more diligent investigation, it could have been proven. Indeed, the depositions of some witnesses, at least, raise a notable doubt about the formal publicity of the impediment. Therefore, if from the acts only the material publicity of the impediment is proven, should one adhere to the opinion of the Episcopal Curia, or should one depart from it? All the difficulty that this case presents is found in this question. Before issuing its own opinion, the Consultors also considered: 1°. That the Bishops of Italy have, for a period of three years, a page in the Sacred Penitentiary, under number 10, in which the same faculty is granted to them "to dispense in cases of hidden impediments, both of the first degree, and of the first and second degrees of affinity, arising from illicit carnal intercourse, even in marriages to be contracted, when, however, all things are prepared for the marriage, and the marriage cannot be postponed without the danger of a grave scandal, until a dispensation can be obtained from the Apostolic See." 2°. That, beyond the aforementioned faculty of the Sacred Penitentiary, it is considered certain by canonists and theologians that Bishops having jurisdiction can, by themselves, not indeed by ordinary, but by extraordinary law, that is, by tacit concession of the Pope, if necessity demands, and in a particular case involving a hidden impediment, dispense their subjects.

[*Latin ed. p. 159*]

159. The institution of *Matrimonii* has never been disapproved of by the Apostolic See. This opinion is held by Scavini, *Theologia Moralis*, Vol. 3, Book 3, Tractate 12, Section 3, Chapter 2; Benedict XIV, *Synodus Dioecesana*, Book 9, Chapter 2, Paragraph 2; Pignatelli, Vol. 3, Consultation 33, Paragraph 4; and Peter Giovine, *De dispensationibus matrimonialibus*, Vol. 1, Section 3, Paragraph 5, Paragraph 1. Therefore, it seems certain that Bishops possess, independently of any specific faculty from the Penitentiary, but by presumed or tacit will of the Pontiff, the power to grant dispensations in cases of hidden impediments, in cases of urgent necessity.

3°. In our case, we must only examine what has actually been done, setting aside the question of whether it was appropriately or inappropriately done. Even if the marriage were illicitly celebrated, its validity would always remain, unless a substantial defect intervened. Therefore, all theolo-

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gians and canonists unanimously declare that, as long as no contrary proof is given with moral certainty, we must maintain the validity of the bond. As Coscius states in *De separator. coniug.*, I, 1, Chapter 6, Paragraph 35: "When dealing with a matter of the utmost gravity, and concerning a marriage already consummated, absolutely certain and conclusive proofs are required."

4°. Due to the reasons mentioned in the exposition of the facts, the present case should be considered among those for which it is not appropriate to seek recourse to the Apostolic See, due to the urgency of time; for great harm would have befallen Peter if the marriage had not taken place beforehand in Sabina.

5°. It does not appear from the procedural acts that the Bishop used any specific faculty. And, assuming that he used the power granted to him by the Penitentiary, it is certain that he did not cease to possess the power that he has by tacit or interpretative concession of the Pontiff.

With these considerations in mind, it remains to be investigated whether the Bishop was able to relax the impediment by means of the sacred faculty of the Penitentiary. It seems certain that both the one who requested the relaxation of the impediment and the one who relaxed it, by means of said faculty, acted in good faith, believing that clause to be...

[*Latin ed. p. 160*]

160. Regarding impediments to marriage, it is to be understood that the phrase "occultum" (hidden) refers only to the formal aspect and not the material aspect. Benedict XIV stated that the more common opinion holds that, when an impediment is materially public but formally hidden, the clause "provided it is hidden" is verified. And although Benedict XIV in *Instit. 87 §. 42* does not accept this opinion, as a private doctor, it can nevertheless be maintained, and it possesses its own validity, as appears from Bonacina's *Tractatus de dispensationibus*, book 1, chapter 2, point 2, number 7: "Something is to be called hidden which is not public, that is, which arises from the majority of the neighborhood, or the parish, or the town," and after a few words, "I add that an impediment is to be considered hidden, even if the thing itself is known, but it is not known according to the reason of the impediment, or the impediment is not public, as when it is known by two or three, as Sánchez well states in *De matrimonio*, book 8, chapter 27, number 50, and Regivaldus and others, whom I have cited above regarding censures; for the quality attached to the word must be understood according to the quality of the word 'I' in *Delicta novissima*, § 1 ff., concerning novelties. But since that particle 'occultum' is like a quality affecting the word 'impediment,' which is considered to be unknown unless it is known as an impediment, it follows that the impediment is considered hidden if the thing itself is unknown as an impediment: as if the marriage is known, but it is unknown that an impediment arises from

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it. And this is true even if, as stated, it is not unknown as an impediment to two or three: for what is known to two or three is not said to be public, but hidden."

The case under consideration was presented to the consultors in the following terms, at least according to what emerges from the process; we have that the impediment is materially known, but formally only to two or three. Therefore, if we suppose that the confessor had the power to grant a dispensation for this very impediment, with the clause "provided it is hidden," he could, according to Bonacina and the more common opinion, grant the dispensation. With this established, we do not see...

[*Latin ed. p. 161*]

161. Why can the Bishop not relax the impediment, either by the power of the Sacred Penitentiary, or at least by the power of probable cause, which Bishops possess by presumed papal will? The responses of the Sacred Penitentiary do not seem to limit this second power of Bishops to dispense only in cases of "occult impediment," which must be such formally and materially; for it is not a power granted by the Pope himself. These two powers can be considered as two streams flowing from the supreme source, which is the power of the Roman Pontiff in the Church, each independent of the other. Furthermore, when the impediment is occult formally, the marriage can be celebrated, and thus, in fact, grave scandals are avoided, and no scandal follows from the celebration of the marriage. Finally, the consulter concluded: since this second power of Bishops is extraordinary and cannot be limited by the responses of the Sacred Penitentiary; and since it is based on the interpretation of the Pope's will, it cannot be supposed that the Supreme Pontiff wishes to deny a dispensation, when those who petition for it, and those who use the dispensation, are all acting in good faith, as is the case here. For the parish priest, the Bishop, and the contracting parties are all found to be acting in good faith; and therefore, the nullity of the marriage does not seem to be sufficiently proven; and even if it is not entirely certain, at least it is very probable that the Bishop validly relaxed the impediment.

OPINION OF THE CANONIST. When I considered, he said, whether there was any other more valid reason for asserting the validity of the marriage, duly celebrated before the Church, with the authority of the Most Reverend Archbishop, and with three witnesses whose testimony has not been called into question, the following occurred to me: that the scruple regarding an invalid dispensation has a very uncertain origin, and that the entire controversy lacks a foundation in undoubted and legitimate authority. It would have to be proven that the Archbishop lacked the authority to relax the impediment, at least publicly and without doubt. If the Most Reverend Archbishop were still living, one could ascertain the truth of the

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matter from him himself. (Tom. XIV, fase. OLX, 11)

[*Latin ed. p. 162*]

162. We must investigate the matter of the marriages. Now, even though we lack this testimony, we certainly know two things: that Peter's impediment was publicly known, and that the Archbishop dispensed from this impediment. Who among us can assert with certainty that the Archbishop possessed no extraordinary power, beyond those commonly granted to other Bishops? And if the Archbishop lacked this power, how can we persuade ourselves that he made no inquiry, felt no doubt, at least as to whether that which was reported as secret could easily become public? Therefore, it seems that either he relaxed the impediment with an authority extraordinarily granted to him, or, certainly, it must be said that he followed the judgment of Liguori, or of the Doctors whom he praises. The Saintly Doctor writes in book 6, chapter 902: "Furthermore, the Doctors commonly say, speaking generally, that in all cases or impediments reserved to the Pope, when there is doubt as to whether they require a dispensation, a dispensation may be granted." Because in cases which frequently occur, an inferior judge may judge according to the law of a superior, so too, a Bishop can dispense in doubtful impediments; because it frequently happens that there is doubt as to the need for a dispensation. However, no one would say that, in those circumstances, it was convenient to appeal to the Apostolic See, when Peter was requesting to enter into marriage the following day, and threats of grave evils were present. In such circumstances, Bishops can also dispense from public impediments, as Liguori states in book 1, chapter 154: "Also, a Bishop can dispense in the common laws of the Pope, for example, in impediments to marriage... when access to the Pope is not easy, and there is danger in delay, because this is conducive to the common good... And in all these matters, Bishops are said to dispense by ordinary right, since such power belongs to them by virtue of their own office, to which it is perpetually annexed. And therefore, they can delegate it, as is certain." Therefore, according to the opinion of Liguori, the Prelate used a power that belonged to him by ordinary right, by virtue of his own office, to which it is perpetually annexed: therefore, the marriage of Peter with the woman of Sabina was valid.

[*Latin ed. p. 163*]

MATRIMONIAL OBSERVATIONS: 63. THE DEFENDER OF THE BOND. Having first presented himself, he embraces the opinion of the consultants, in which both agree that, in this case, the marriage is valid. He observes, first of all, that the entire discussion revolves around establishing whether the impediment of affinity is to be considered present in this case, whether it is hidden or not; and whether, and when, Bishops have the power to grant dispensations in cases of impediments that are

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removed by ecclesiastical law, specifically in the second degree of the illicit union. Something is said to be hidden when it is known to some, but not known to all of the community. Thus, in a small community, it is considered hidden if it is known to two or three people; and in a large community, if it is known to six or seven people; but it is certainly not hidden if it is understood. On the other hand, something is not hidden if, although known to a few, it is nevertheless in danger of becoming known to others. Regarding the impediments to marriage, something can be hidden either materially or formally; materially, when the fact from which the impediment arises is hidden; formally, when the fact is known, but the impediment arising from it is not recognized. But here a serious question is raised: whether, with easy knowledge, if the law is ignored, the impediment can simply be called hidden. Many ancient and modern theologians and canonists affirm this. The reason given by Bonacina in *Tractatus de Legis Dispensationibus*, book 1, question 2, number 7: "I add that an impediment is considered hidden, even if the thing itself is known, but the impediment itself, according to reason, is not known," or "if the impediment is not public." In the matter at hand, the impediment appears to the defender to be materially and formally hidden. First, because it is not a matter of a simple friendship that existed between Peter and Sabina, but of the knowledge of a carnal union between them, which certainly could not be known unless they had revealed it, and Peter always denied it, and perhaps even confessed it to one priest. Secondly, because only two witnesses assert that they know that the impediment of affinity exists between the betrothed; and because the priest himself, upon noticing the impediment, did not mention it.

[*Latin ed. p. 164*]

164. The marriage was formally declared to be clandestine, and the Bishop retained it as such. However, it cannot be denied that, in this case, the impediment was at least formally concealed; and it is easily demonstrated that Bishops possess the power to grant dispensations concerning such impediments. Certainly, this is not expressly found anywhere in the law, but it is the common doctrine of theologians and canonists, whose authority it is permissible to follow. For, although Benedict XIV may hold a contrary opinion, he is nevertheless compelled to testify, in the Instruction *Inst it. 87 § 42*, that almost all writers believe that the penitential mandate is fulfilled, provided that the impediment is concealed. Therefore, the judge who pronounced the sentence declaring the marriage null, seems to have been misled by practice. The Penitentiary, which for three years has granted this faculty to Bishops, uses the term "concealed" in its decrees. But the Holy Tribunal does not exclude the right belonging to Bishops, declared and admitted by theologians and canonists, based on the interpretation of the Supreme Pontiff, lest scandals

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arise, to grant dispensations in cases of concealed impediments, in the sense in which the Doctors teach, namely, an impediment which is materially public, but formally concealed. And therefore, even if the Holy Penitentiary grants this faculty in a stricter sense, it could not be said that a dispensation was given, if the Bishop had used only this power alone. But this cannot be admitted: for it is certain that Bishops possess another power of this kind, by the will of the Supreme Pontiff. Furthermore, in the one who grants the dispensation, the intention must not be lacking, to grant the dispensation, as far as his ability allows, and if the case requires it (1).

(1) For what is intention, if not the act of the will, by which one tends towards an end through means? The will tends not to the means, but to the end. And St. Thomas, *1. 2. q. 12 a. 2*, says: "Intention refers to the end, according to the fact that it is the term of the will." Love is an effective end, when it is accompanied by the means to achieve it. Therefore, if someone has the means at hand, even if he does not know that he has them, or does not think about them, he certainly intends to use them, for otherwise it could not be said that he has an effective will. Everyone is presumed to have chosen (or at least to have intended to choose) the path by which his disposition may be useful and effective.

[*Latin ed. p. 165*]

Regarding marriage: and therefore, the act of dispensation becomes effective; because if there is a power, it is not destroyed by that which is not actually considered in its exercise. Nor does it present a difficulty in giving a response. Penitentiary Office in Almeria, 28 August 1872; because the response of the Sacred Tribunal refers to a particular case: it speaks of one who, in danger of death, wishes to contract marriage, and, apart from the scandal arising from civil marriage, there are no other evils or scandals to be avoided, so that the marriage is validated. For it was not a question of removing a scandal due to incestuous cohabitation in our case, but rather of resolving disputes between the betrothed and their parents, and, what is more pleasing, of preventing the matter of a attempted abortion from being discussed before civil authorities, given the infamy of the betrothed and the scandal of the entire town. Finally, the defender of the bond concluded that, even if all these things were different, the marriage would nevertheless remain valid in its own right. Indeed, the established opinion is that, in the absence of jurisdiction, which the Church can supply, the Church itself supplies the jurisdiction, if there is a common error and good faith is present (1). Therefore, having considered all these things, the following point was to be demonstrated: whether the judgment of the Curia should be confirmed or rejected in this case.

RESOLUTION. The Sacred Congregation, after discussion, on January 29, 1881, decided to respond: It does not appear that the marriage is null.

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(1) The Holy Doctor Liguori teaches in book 6, treatise 4, chapter 2, paragraph 173, that it is permissible to administer the sacrament of Penance with probable jurisdiction, when there is a grave necessity or great utility: why could not the Bishop, in a case of necessity, exercise the faculty that he most probably possessed, of relaxing said impediment?

[*Latin ed. p. 166*]

466. CONCERNING MARRIAGES: I. The marriage, which had been declared dissolved by the judgment of the Episcopal court, remains in its force and validity, and, after careful consideration, the Fathers have decided, based on the presented documents, that there is no nullity in the marriage.

II. Besides the faculty granted by the Holy Penitentiary to Bishops to dispense in cases of hidden impediments arising from an illicit union, it is the opinion of the Doctors that Bishops, by extraordinary right or by tacit concession of the Pope, possess the faculty to grant dispensations to those subject to the same impediment, if necessity demands it.

III. Indeed, it is presumed that the Supreme Pontiff delegates the power to dispense to a Bishop when such urgent circumstances arise, in which neither the Supreme Pontiff nor the marriage contract, to which everything is arranged to be deferred, can be consulted, and to prevent scandal, and to prepare those destined for marriage within the family (1).

IV. The present case can be included among those for which recourse to the Apostolic See is not possible due to the urgency of time, since it concerns the resolution of disputes between the betrothed and their parents, and to prevent the question of a presumed attempted abortion from being brought before the civil authorities, which would cause shame to the betrothed and a grave scandal to the entire people.

(1) St. Thomas, 1-2, q. 95, art. 6, c. a: "Every law is ordained for the common good of mankind; and it obtains its force and reason only in so far as it tends to this end. But it happens frequently that something is useful for the common good in many cases; yet, in some cases, it is most harmful. Since, therefore, the legislator cannot foresee all individual cases, he proposes a law according to those things which happen in most cases. If, however, a case arises in which the observance of such a law would be harmful to the common good, it is not to be observed... If there is a sudden danger, not admitting of delay, so that recourse to a superior cannot be had, necessity itself has the dispensation, because necessity is not subject to the law... He who acts in a case of necessity, besides the words of the law, does not judge of the law itself, but he judges of the particular case, in which he sees that the words of the law are not to be observed."

[*Latin ed. p. 167*]

MATRIMONII 167. V. The opinion of Doctors is more sound, which holds that, while an impediment is materially public and formally hidden,

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that clause – provided the impediment is hidden – which is usually added by the Sacred Penitentiary, when granting a dispensation, is verified. VI. An impediment is considered hidden, even if the thing itself is known, but the impediment is ignored according to the reason of the impediment; or the impediment is not public, insofar as the impediment, although known by two or three, is not publicly known. VII. The impediment appears in the matter contained in the words presented, when it was materially known to almost everyone, but formally only to two or three; therefore, it could validly be dispensed by the Bishop, now deceased, having used either of these faculties.

PARTICIPATIONIS FRUCTUUM ET DISTRIBUTIONUM. August 14, 1880. SUMMARY OF FACTS. In the political turmoil in Hispaniae, while a new Government refused to pay the canonical pensions, Joseph, a Canon, abandoned his position in the Cathedral and fled to his homeland. He did this, as he reported, not only to avoid the dangers of imprisonment, but also to provide for his own sustenance. He later returned to his position in the Cathedral, but with the outbreak of a new civil war, he again returned to his homeland in the year 1870, having, as he said, been granted permission to leave by both the Bishop and the Chapter. After the war, and with things settled, he returned to his place of residence on February 10, 1877, and recovered his portion of the Canonry, which had been paid by the Government and deposited with the Chapter. But, unfortunately:

[*Latin ed. p. 168*]

468. The light of participation, having been obscured by a certain disposition of the Statutes, he refused to pay the portion due. Therefore, the Canon Joseph, having offered his supplication in writing on March 21, 1877, appealed to the Sacred Congregation, earnestly requesting that it declare that he had the right, during the time of his absence, to vindicate his participation in the Canonry, either completely or partially, or at least that he be treated with leniency.

WHAT SEEMS TO BE AGAINST THE PETITIONER. Firstly, it appears that the Petitioner is laboring in vain to justify his prolonged absence, whether through fear or through lack of means of sustenance. For it is well known that fear does not excuse from obligation, and in the case of absence from residence, the fear must be such as would affect a steadfast man: for no frivolous fear is an excuse (L. Met. 6. 7 ff.). Nor is it sufficient that anyone has been frightened by any terror (L. Met. 3 ff. and subsequent sections on greater causes). Nor is the fear of some vexation sufficiently grave, unless the adversary has threatened the bonds of presence (L. ult. §. ff. on the subject of fear); for fear must be purged not merely by words or disputes, but by the atrocity of the deed (L. 7 and 9 cited above, title; and Bossius, cap. 11, §. 4, n. 14, 16). Bossius states that, in order to establish a legally just fear, or one that would affect a steadfast man, it is not enough

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that the evil be absolutely and intrinsically great and serious, but also that the one fearing cannot easily repel it or encounter it. In these cases, one could truly be said to be impotent to resist: for impotence, as Barbos states in *De Canonicis*, cap. 24, n. 39, is when the absence is not voluntary but is caused by some event; so that one cannot remain absent without being able to reside. Furthermore, according to the infamous rule that fear is not presumed, it must be proven by the one alleging it, and indeed fully and conclusively, as stated by Piton, *Disceptationes*, 110, n. 34, and by Voet, *lib. 4, tit. 2, n. 14*. But all of this...

[*Latin ed. p. 169*]

169. The reason for the lack of participation is easily apparent from the very relationship between the Bishop and the canon: For he says, "It is not known whether the canon was justly or unjustly imprisoned, nor do I know of any involvement in this matter, nor have I ever heard that anyone threatened him. Therefore, no greater fear afflicted him than afflicted the other canons." Since neither the canons nor the orator abandoned the benefice, neither should the orator have abandoned it. Therefore, since neither imprisonment nor danger to his life threatened the orator, it must be said that a just cause for abandoning his residence was lacking, and that he is to be considered as having lost not only his distributions, according to Chapter 1, section 6, concerning clerics who do not reside, but also the fruits of his benefice, from which he must be deprived, according to the sanction of the Council of Trent, session 23, chapter 12, concerning reforms, unless he can find a remedy. For it is established in the Capitular statutes of 1870 that, in order to obtain a dispensation, four months are sufficient, whether continuous or intermittent. For it is known that a lower law cannot derogate from a higher law, that is, from the universal law of the Church, which expressly establishes such statutes in the Council of Trent, in session 23, chapter 12. Furthermore, as Pignatelli states in *Consultationes*, 115, number 3, volume 9, any statute must be interpreted in this way. Even if the canon had been pressed by poverty, it was not proper for him to abandon his residence, but rather to make this known to the Chapter and to his superiors; and from them, tacit or express permission must be obtained. Let Pignatelli be heard in *Consultationes*, 26, number 13 – there is a passage on a just cause after chapter 1, section 6, concerning clerics who do not reside. There, it is stated, "except for those excused by infirmity or a just and reasonable necessity of the body, or by evident benefit to the Church," and this was recalled by the Council of Trent, in session 24, chapter 12, and declared by the Sacred Congregation of Bishops in Landen on April 4, 1607, stating that a just cause must be approved not only by the Chapter, but also by the Ordinary. After this, it would be useless to seek the grace of a dispensation in order that the aforementioned canon might regain the fruits of his benefice and the distributions from the Chapter, unless the

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Prince grants these graces without prejudice to the third party, concerning the rescripts in section 6. Although the matter of prejudice was present in the theme concerning the canons or the Church.

[*Latin ed. p. 170*]

170. The fruits and revenues ought to accrue to those who are present, according to Glossa Ordinaria, in Clementine II, chapter 2; and the Council of Trent, Session 21, chapter 2; and Session 24, chapter 12. Pignatelli, *Consultationes*, 124, number 17, volume 1. THESE SEEM TO FAVOR THE DEFENDANT. On the contrary, it is argued that, provided there is a just and legitimate reason for absence, a Canon, even if absent, is entitled to the fruits and revenues of his benefice. The reasons for absence are enumerated by Boniface VIII in chapter 1, concerning those Clerics who do not reside, in paragraph 6: "except those for whom infirmity, or a just and reasonable necessity of the body, or evident utility to the Church..." This is reiterated by the Council of Trent, Session 24, chapter 12, concerning reforms. It is affirmed that war and the fear of war constitute a just cause for non-residence, as stated by the Rota, Decree 141, paragraph 1, section 17, in the *Recentiora*: "When war and the fear thereof present a just cause for non-residence, as held by Barbosa in his collection, concerning the Council of Trent, Session 24, chapter 1, paragraph 100, concerning reforms. The distribution of revenues, daily, is two *glossa* (a unit of currency), number 73... the reason being that no one is obliged to expose himself to danger, as noted in chapter 1, concerning Clerics who do not reside, and in the chapter concerning persons, where the *glossa* on the word "periculum" (danger) is found, number 6. And to this effect, the fear and suspicion of war also suffice as a just cause for non-residence, even if no actual harm or danger occurs, as stated by Cravet, 4, number 5, consultation 318, and others. This holds true even if war does not ensue." See also Piton, *Disputationes Ecclesiasticae*, number 11, where the saying of the tragedian Seneca is also cited: "The fear of war is worse than war itself." The reason, as Barbosa states in chapter 34, number 39, concerning canons, is that the intention of the Holy See in chapter 1, concerning Clerics who do not reside, in paragraph 6, is to exclude from these revenues those who are negligent or contemptuous in their residence, not those who are incapable; and incapacity is said to occur when the absence is not voluntary, but is caused by some circumstance, so that it prevents the Canon from residing, as stated by Calder, cause 17, concerning benefices, where it is considered that not only actual harm, but also harm that is probably foreseen, excuses one from residence, because no one ought to expect danger to his person. See also the Rota, *coram*.

[*Latin ed. p. 171*]

PARTICIPATIONIS 171 Molines, decis. 808, num. 8 et seqq. Neither was the intention of the Holy Office different in Fundi on July 3, 1734, in Carpen

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on September 17, 1616, nor in the most recent distribution in Palencia on July 20, 1878. (1) Therefore, since, for a fear to be just and legally valid, it is not necessary that there be a true and real imputation of evil to the one fearing, because in that case it would not be fear or dread, but damage, but rather that evil be imminent or a danger of evil, or, which is the same thing, that a just and probable fear of the imputation of evil be present, according to what is taught in L. 1, nec timorem, ff. concerning that which causes fear, and L. 3 §. Armis, ff. concerning force and armed force, and as Mascard teaches, conclusions 1057, n. 17, and others, it follows that there was a just and legitimate reason that removed the aforementioned Canon from his residence. Moreover, the defects or licenses of the canons, which were to be requested from the Bishop and Chapter in order that they might enjoy the fruits of their benefice and distributions, or at least a protestation made, cannot help. For, as Piton notes, disputations Eccl. 36, num. 4, when it is a question of canons or benefices, and in these cases in which they are licensed by law, the license of a man or superior is not required, as Barbos states, concerning canons, chapter 24, n. 26. Pignat, cons. 36, num. 4, t. 9. Rota, decis. 117, n. 17, part. 15, recent. Fagnan, in cap. Relat., num. 18, Garz, de benef., p. 3, c. 2, num. 95. With these brief considerations, both in law and in fact, having presented the reasons, the matter was referred to the Most Eminent Fathers to resolve the following doubt: Whether, in the case of absence, the fruits of the benefice and distributions are due.

(1) Compare this question with the one reported in Vol. XI, page 589. However, note the difference between that question and the present one. In that question, the Bishop states that the canons did not fear canonical exile or deportation, which they avoided by fleeing; in this case, unless there is a vain fear, which does not provide any excuse.

[*Latin ed. p. 172*]

172. RESOLUTION REGARDING PARTICIPATION. The Sacred Congregation of the Council, after deliberation on August 14, 1880, responded: Negatively, except in the case where a reasonable reason, judged by the Bishop, exists for the absence. FROM WHICH THE FOLLOWING ARE DERIVED: I. That vanity is no excuse; but only the fear that falls upon a steadfast man can canonically excuse him from the obligation to reside. II. To constitute a legally justifiable fear, and one that falls upon a steadfast man, it is not only required that the evil be great and serious in itself, but also that the one fearing it cannot easily repel it. III. He who is considered impotent to resist is not to be excused; for impotence is verified when the absence is not voluntary, or when it does not stem from a benefit, preventing him from residing. IV. The fear, because of which the Canon has not fulfilled his duties in his parish, does not appear to be legally justifiable, nor can it excuse him from residence, if it lacks the necessary requisites. For, the Bishop states, this Canon has never been justly or unjustly imprisoned

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or prosecuted, nor has he ever threatened anyone. REGARDING REINTEGRATION INTO THE PARISH. On April 24th and May 29th, 1880. SUMMARY OF THE CASE. The Priest, Ludovicus L., in a written petition dated October 30th of the preceding year, stated that he had been dismissed by his own Bishop, without judgment, without a canonical reason, although a juridical one.

[*Latin ed. p. 173*]

REINTEGRATION INTO THE PARISH 173. After having requested reinstatement, the petitioner, formerly a removable priest from the parish of M., commonly known as "Desservant," who had served since 1875, and the removable priest, Q., were ordered to depart. The petitioner stated that he had refused to comply with this order, because he was being forced to take charge of a parish much smaller than his own, without any reasonable justification. In this matter, the Vicar General forbade him from celebrating the sacrifice of the Mass in the parish of M., which was immediately published in the public gazettes. Therefore, afflicted by this penalty, the petitioner earnestly requested his reinstatement into the aforementioned parish. Upon being questioned, the Bishop, for information and opinion, reported on the 10th of November, 1879, that the priest L. had been transferred from one parish to another, not once, nor twice, by his predecessors, and that this had been done for a reasonable cause. Meanwhile, the parish priest, having visited the new church, returned to his former parish and informed the Bishop that he preferred to send a messenger to his parish than to administer the newly offered parish. Then, the notification was accepted, but he was assigned an annual pension of 1000 livres, to be paid from the fund established for infirm priests. The Bishop added that the aforementioned parish was also burdened with excessive foreign tithes, and although the priest was endowed with honest morals, he had, for many years, kept two young female servants in his home, contrary to the diocesan regulations.

DISCUSSION: DEFENSE OF THE PARISH PRIEST. The defender begins his argument by addressing the difficulty that is commonly raised among the French, namely, that the canon laws have been altered by a convention between the Republic and the Holy See. However, this is clearly untrue, since the aforementioned convention confirms the canon laws. When the matter of appointing parish priests is discussed, it is necessary to select individuals who meet the requirements of the Church's canons. And after they have been elected, it is stipulated that all those who are to work in the service of the Lord must be canonically ordained. Therefore, this has occurred...

[*Latin ed. p. 174*]

174. Regarding REINTEGRATION INTO THE PARISH, it is stated that,

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without distinction between parochial vicars (of the region or canton) and assistant vicars, both are granted a canonical institution. Therefore, they are not to be distinguished in any way, since the care of souls has been entrusted to each of them, they enjoy the same honors, and the same authority has been granted to them. From this, the advocate argued that the cause of this vicar should be determined according to the sacred canons, because a perpetual right has resulted from that institution. He proves that parochial benefices, especially, are to be conferred for life and perpetually, citing the Council of Nemausensi from the 11th century, and the teachings of Gonzalez in register 8 of the chancery, and the entire school of canonists. He argues that if this were not the case, vicars would not only not deserve to be called pastors, but would, by right, be relegated to a lower class of mercenaries, as stated by the sacred Synod of Trent in session 23, chapter 1, concerning reform. Regarding this matter, he stated that a client cannot be deprived of this perpetual right without a just and legitimate cause, which cannot be found except in the necessity or utility of the Church. He completely refutes these causes; but the Vicar General removed the vicar, not because of any necessity, but simply to indulge his own will. Furthermore, he argues that if, without any legitimate cause, the client was removed from the parish solely due to private animosities, and if, despite this, good works were performed for the benefit of souls and the Church by the same vicar, these works should be recognized and credited to him. He also stated, with excellent reasoning: "So that the people of the parish complain about his absence." Therefore, if there was no legitimate cause, and if the vicar was not guilty of any crime, he was unjustly deprived of his parish. This kind of injustice, he argues, does not disappear, even if the rector appears to be guilty of some fault. Indeed, it is established in law that a guilty party cannot be punished unless proper warnings have been given by the pontifical law, and these warnings have been given at the proper times, which is entirely lacking in this case. Therefore, the advocate concluded that his client has the right to be restored to his own parish, from which he was unjustly removed, and that those who unjustly deprived him should be condemned.

[*Latin ed. p. 175*]

REINTEGRATION INTO THE PARISH 175. DEFENSE OF THE CURIA. There can be no doubt that a parish priest can renounce [his office], as is evident from the title concerning renunciation, and, in particular, as Flaminio Porris, *De Resignatione Beneficiorum*, book 2, question 1, number 104, states; for each one can renounce a benefice that belongs to him, whether spiritual or temporal, as Gare teaches, page 2, chapter 3, number 4, and as Barbosa affirms in *De Officiis et Potestatibus Parochorum*, page 2, chapter 29. However, for a renunciation to be valid, it must have three conditions: that it be voluntary, that it be accepted by the legitimate superior, and that

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it be made for a reason; otherwise, it would not be accepted, as the School of Canonists, and especially Reiffenstuel, *Titulus De Renunciatione*, section 1, number 1, states, defining renunciation as "the voluntary dismissal of an ecclesiastical benefice, made before the legitimate superior who accepts it." In the present case, it is evident that the priest L. sent a notification to the parish and that his renunciation was clothed with the conditions required by law. Indeed, that he relinquished the parish of M. is evident from the letters of the Dean and Curate, given in their names to the Bishop; that it was accepted by a competent authority is demonstrated by the information from the Ordinary himself; and that it was voluntary and not coerced, and made for a reason, is evident from the fact that he began to make arrangements for his affairs after having spent everything. Therefore, the present case is analogous to what is noted in canon Quam periculosum, 7, question 1, chapter 1, where, among the canons concerning election, there is a gloss which states that "he who once renounces his right, cannot afterwards return to it." Furthermore, it is a well-known principle that what was previously voluntary, afterwards becomes necessary, as stated in Argument 1, as Reiffenstuel states in *Titulus De Renunciatione*, section 2, number 39. The opposing assertion of the parish priest Orator seems to be of little weight; for the mind of the priest L. is variable and changeable, and it is therefore not surprising that he denies what he previously asserted. It cannot be said that the testimony of the Bishop, as in his own cause, is to be suspected; for, as Benedict XIV states in *Constitutiones*, section 16, number 7, "Bishops are not less concerned with the salvation of others than with their own."

[*Latin ed. p. 176*]

176. Regarding the REINTEGRATION into the parish, customs are such that they are moved either by hatred or favor, and they say "good is evil, and evil is good," placing darkness for light, and light for darkness. Therefore, since nothing prevents the legitimate dismissal from the parish of M., and since the reintegration is requested by the priest L., it seems that it should be denied. However, even if we assume that the renunciation of the parish by the parish priest M. is not valid, the situation is not improved. It is known that, according to the Concordat established between the Holy See and the French government in the year 1801, a double form of parish has been established in this region: one of those who are inamovable, chosen with the consent of the government, from whom a pension is received, and another of those who are removable (annexes), chosen freely and without the intervention of civil authority by the Bishops, who can remove or transfer them at their discretion. This special discipline of the Gallican Church, although it does not seem to correspond at first glance to the decrees of the Council of Trent, does not seem to be opposed to them, according to what is stated in Session 24, chapter 13, concerning Reforms. And if any defect existed in the ecclesiastical discipline that has been in force for many

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centuries, it was undoubtedly remedied by the Rescript of Gregory XVI, dated May 1, 1845, addressed to the Bishop of Liège, and by that of Pius IX, dated October 5, 1864, addressed to the Bishop of Évreux, as can be seen in Virdunen, Reintegrationis in Paroeciam, March 23, 1878, §. It is clear that the Bishops are exercising their rightful authority if they transfer parish priests who are not performing their duties elsewhere. Such parish priests can be considered either as removable vicars at the Bishop's discretion, or as manual possessors of the benefice; in either case, it always seems that the opinion should prevail that the Bishops can remove them from office at their discretion. Since these removals lack the canonical form and judicial order, because this is only required in the case of removals of those parishes that are conferred with perpetual title, it is improper for a parish priest who holds a (1) You have already discussed a similar question in Volume XI, page 382.

[*Latin ed. p. 177*]

REINTEGRATION INTO THE PARISH 177. He possessed the parish precariously, and brought forth complaints against the one who sought to remove him. However, so that in this matter he might not seem to have followed only the highest law, there are several reasons present which exclude reintegration into the parish: the first is his reluctance to heed the warnings and precepts of his Ordinary. This Ordinary had ordered that the parish priest, after having submitted his resignation, should leave the parish premises; but, on the contrary, he established his dwelling there. Furthermore, it must be noted that Parish Priest L. possesses a turbulent disposition and is prone to serious quarrels. Hence, many disputes and discordances arose, sometimes with local authorities, sometimes with the advisors of the Fabric (the parish council), so that complaints and appeals against him almost constantly erupted. To avert these inconveniences, the prudent and sound advice of the Prelate, to transfer him to several parishes, proved to be of no avail, for he always remained the same. Another reason for his removal is found in his excessive willingness to contract debts, by which he is already burdened. Therefore, after all things have been rightly considered, it was deemed necessary for the E.E.P.P. [Most Eminent and Reverend Fathers] to decide what response should be given to the question of whether there is a place for reintegration in this case.

RESOLUTION. The Sacred Congregation of the Council, after discussing the matter on the days of April 24th and May 29th, 1880, decided to respond: "No" (1).

(1) For deductions, regarding the procedures to be followed, see the question already presented, similar to this one, in Vol. XI, page 382, *acta ephem.*, Tom. XIV, fasc. CXL. Regarding other matters, see the following

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appendix, page 181.

[*Latin ed. p. 178*]

178 OF TRANSLATIONS, SUSPENSIONS, EXPULSIONS, CENSURES, AND EXPENSES. December 11, 1880. SUMMARY OF THE CASE. The priest, John, was appointed by his own Bishop in the year 1876 to a parish which had not been newly established, but had been separated from another, larger parish, and was located on the island of Bourbon, under the civil jurisdiction of the French government. Due to certain disagreements arising between the priest, John, and the Syndic, concerning the local political elections, the priest, without consulting the Bishop, published and disseminated a notorious pamphlet against the Syndic. Consequently, such anger arose that the matter was brought before a secular court, and the priest, John, received an unfavorable judgment in both the first and second instances. The Bishop then removed John and appointed him as a vice-parish priest, under the authority of the titular parish priest. The priest refused to obey; but the Bishop gave him a peremptory deadline to take possession of the new parish; and, having failed to do so, declared that he would proceed to impose more severe penalties. Then John obeyed, but disagreements and controversies arose between him and the titular parish priest. Subsequently, he endeavored to have the notorious pamphlet against the Bishop suppressed, which had been published by a certain profligate priest, in which, among other things, the removal of the priest, John, was recounted. Furthermore, the Archbishop received depositions from two women, one of whom was married, stating that the priest, John, had had an improper relationship with her, and that he had also solicited her in confession; the other stated that she had committed sin with him on several occasions, contrary to Sestri Ponente. For all of these reasons, on July 20, 1879, the Bishop, after due deliberation, pronounced a sentence against the aforementioned priest, in his capacity as vicar, and against the entire Church.

[*Latin ed. p. 179*]

TRANSLATION, SUSPENSION, ETC. 179. The ecclesiastical jurisdiction deprived him of his office. And since the civil government had decreed a reduction in the number of clergy in the island of Bourbon, the Bishop, seizing the opportunity, requested and obtained that the aforementioned priest be removed from the clergy of the diocese and transported to Gaul. Feeling himself burdened by all these things, the priest appealed to the Holy Congregation.

SYNOPTIC DISCUSSION. DEFENSE OF THE BISHOP. The defender argued, "It must be noted that the matter concerns not a titular parish priest, properly so-called, but a removable vicar at the Bishop's discretion. Therefore, it appears that the Ordinary has rightly exercised his authority

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when he transferred the priest John from the parish to a vicariate. Such parish priests can be considered either as removable vicars at the Bishop's discretion, or as possessors of a manual benefice. In either case, it can be maintained that the Bishop has the power to remove them at will; nor is he bound to observe the canonical form and the proper judicial procedure; this applies only to parish priests properly so-called. It cannot be said that the Bishop acted arbitrarily and without reason: for the priest John is endowed with a turbulent disposition and a propensity for quarrels; led by this, he not only offended the canons, but also the synodal constitutions themselves, by publishing a scandalous pamphlet against the Syndic. As a result of this, such animosity and hatred arose between them, to the scandal of the faithful and the disturbance of public tranquility, which could in no way be suppressed. Therefore, if the penalty of removal was imposed, it was not arbitrarily and without cause, but because, having disregarded the Bishop's commands, John acted disobediently and persistently; and because it was clearly necessary for the good of souls. Furthermore, the Bishop added, it should also be noted that the priests who come to the island of Bourbon do not appear to be bound to the diocese by a true and proper incardination."

[*Latin ed. p. 180*]

180 TRANSLATIONS, SUSPENSIONS, ETC., but missionaries should be encouraged who leave France to dedicate themselves to missions, and from there they may, at their own discretion, depart, either returning to their homeland or not. Therefore, the Bishop, having just causes, rightly used his authority in removing the priest John. Consequently, he does not seem to be subject to claims for damages, because he did not inflict an injustice. Indeed, if something has been done either by right or omitted by right, and although detriment has arisen to another from this, there is no claim for damages, because no one is understood to have caused damage, unless he does that which he has no right to do; I. 151 ff. on the rules of law. DEFENSE OF THE PRIEST. It should not be omitted that the decree of removal from the office of parish priest is, by its own law, null, because it was issued without the citation of the opposing party. And since the law establishes the immovability of a parish priest, neither a temporary suspension nor a total deprivation of office is valid, unless preceded by three canonical warnings, or by one for three months. It cannot be objected that this matter concerns a parish priest who can be removed at the Bishop's pleasure; for in France, those who are chosen for the office of parish priest are those whom the canons of the Church require. But once they have been chosen, canonical institution is granted to them, without any distinction between regular and subsidiary parish priests. With these things established, the legal procedures should have been followed against the aforementioned priest John. Even admitting that the Bishop's decree is maintained, his judg-

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ment seems to be flawed by an informed conscience. Indeed, although it is permissible, according to the Council of Trent, Session 14, chapter 1, on reforms, to inflict this suspension, it does not extend to the deprivation of jurisdiction, but is limited to suspension from the exercise of the ministry and from advancement to higher orders. Furthermore, the Bishop seems to have given too much credence to the depositions of two women. These depositions are, in fact, to be considered among the most heinous of calumnies, as is evident from the letters of the Very Reverend General Vicar himself, recently sent. For he confesses in those same letters that the woman, about whom we are speaking in this case, testified that she falsely accused another man of solicitation.

[*Latin ed. p. 181*]

TRANSLATION, SUSPENSION, ETC. 18. The matter was presented to a priest present, who stated that there was also another accusation, regarding which, apart from the testimony of the accuser, a woman, no proof is offered of its truth. Having considered both matters, the following questions were proposed for resolution:

I. Whether the decrees and sentence of the Bishop are valid in this case. And, to the extent that they are negative.

II. Whether there is any basis for amending damages and compensating for expenses in this case.

RESOLUTION. The Sacred Congregation of the Holy Office, after deliberation on December 11, 1830, responded:

To I. Regarding the removal from the parish... affirmatively; regarding the rest, negatively.

To II. Nothing is to be decided.

APPENDIX II. Regarding Subsidiary Churches in Gallia after the Concordat of the year 1801.

Since it seemed superfluous to us to collect deductions regarding the custom in previous cases, which have a close analogy with others of this kind, and which we have often mentioned in the chronicle, we have turned our attention to other matters. And, unless our judgment has failed us, we believe that we would not be entirely without benefit to our readers if we presented some information regarding the churches in Gallia that are subsidiary to parishes, whose rectors, with the authorization of only civil authority, can be removed at the will of the Ordinaries.

Napoleon, the first Consul of the Gallican Republic, desired, among other things, to carry out a new division of the dioceses throughout the Republic. He dared to demand this from the Apostolic See, and he obtained it; because even in Rome, the desire burned to restore, in the best possible

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way, ecclesiastical discipline. This Gallican law had become corrupt.

[*Latin ed. p. 182*]

APPENDIX II. and furious rebellion which, on the 9th of April, 1802, had overturned almost everything human and divine in Gallia. For many years, after these difficulties, the people, as far as the greatest number were concerned, had been striving to understand the law, now in Gallia, by force.

It is also to be noted that on the 15th of July, 1801, the Most Holy Pope Pius VII requested that all the Bishops of Gallia relinquish their titles; that is to say, that they be mentioned in connection with the plan to suppress vacant churches, to establish new ones, and to provide for new pastors, all of which was to be provided for by the Government. The Concordat has Article 9, which states: "The Bishops, in their respective dioceses, shall define the boundaries of new parishes; and this definition shall have no effect unless after the consent and agreement of the Government."

And Article 10 states: "The same Bishops shall name the parishes; nor shall they choose persons, unless they are approved by the Government." And Article 14 states: "The Gallican Republic shall include in itself, both the Bishops and the pastors, whose dioceses and parishes are newly defined, and shall provide for the maintenance of those whose status requires it."

In the Bull *Ecclesia Christi*, Pope Pius VII decreed: "Having constituted dioceses, it is necessary that, even if the boundaries of the parishes are not entirely defined, they should nevertheless be defined."

(1) If the Bishops, imbued with the Gallican law, had not contradicted, and had not opposed, according to their own principles, but had, as far as they could, opposed the suppression, as some of them said, in order to avoid intrusions and schisms. Hence, by the mercy of God, only four remained opposed to the Holy Father.

[*Latin ed. p. 183*]

APPENDIX II. We desire that a description of these [new parish structures] be drawn up by the Bishops; however, this description will not have any effect unless the consent of the government is also obtained. The right to appoint parish priests belongs to the Bishops; however, they will not appoint individuals unless they are endowed with the qualities required by the canons of the Church, and (so that tranquility may be assured to a greater extent) have obtained the approval of the government. The same is true regarding a particular type of parish, as stated in the Bull *Qui Christi Domini* and in the executive decree of Cardinal Caprara. However, the First Consul of the Republic, Napoleon, who had been unable to achieve, according to the intentions of the Holy See, many things in the negotiation of the Concordat, when he published the Concordat, also issued those articles (1) which were called organic. Of these, the following are relevant: Article 60: "There will be established at least one parish for each district

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of the peace court. Furthermore, as many chapels will be established as necessity may require." (2) Article 61: "Each Bishop, in concert with the Prefect, will determine the number and extent of these chapels. The plans drawn up will be submitted to the government, and they cannot be put into effect without its authorization." Article 63: "The priests who serve the chapels are appointed by the Bishops." Article 31: "Vicars and priests serving chapels will exercise their ministry under the supervision and direction of the parish priests. They will be approved by the Bishop and can be revoked by him." (3) (1) Such articles entirely lacked authority; because Pope Pius VII protested against them in his Allocutions of May 24, 1802, and March 16, 1808, and formally declared that they did not pertain to the Concordat. These same articles declare that nothing in them is contrary to the doctrine and laws of the Church, by the same Pope Pius VII, in the Bull *Ubi primum*, in which he entered into a new Concordat with King Lewis XVIII of France. (2) The French government, in order to lessen the burden on the public treasury resulting from the obligation it had undertaken to endow the new parishes, permitted only one parish church to be established in each district of the peace court. However, since the extent and population of the districts of the peace courts were greater than could be adequately served by the care of a single pastor, other chapels were also established without endowment, and their pastors were to be supported by the alms of the faithful until they obtained an annual pension. The annual endowment of the larger parishes was established at 1500 livres, while the endowment of the chapels was established at 1000 livres. (3) (The Latin version of the four articles.) Article 60. At least one parish shall be established for each district of the peace court. Furthermore, as many chapels shall be established as necessity may require.

[*Latin ed. p. 184*]

184 APPENDIX II. Therefore, the parishes were truly of two kinds; which differed not only in name, but also in condition. They differ in name, because the first were called "Parishes" or "major parishes"; while the others were called "Succursals," or "minor parishes." They differ in condition, because the pastors of the Succursals are appointed and removed by the Bishops at their discretion; while the pastors of the major parishes cannot be removed by the Bishops, except through a prior canonical process. The law requires that pastors be chosen who are immovable, unless they are found to be unworthy; but this is not required with regard to the pastors of Succursals. It is a matter of public knowledge that Article 61 was ordered to be executed, and from the beginning, not only the Government, but also the Bishops, have held the pastors of the major parishes to be immovable, while the pastors of the Succursals are considered removable. This discipline has remained constant, and still remains. It would seem superfluous to note that such statutes, with regard to parishes, do not have the force of law;

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since they were devised and enacted solely by secular authority. For in order for these articles to be considered as a source of new French law, they must, either by themselves or by the consent of the Supreme Pontiff, and the Bishops, have the force of ecclesiastical law. But these are entirely lacking in the necessary requirements; for, as we have indicated, they were enacted solely by secular authority, while it is certain that ecclesiastical law is based on laws, or customs, established by ecclesiastical authority. They lack the consent of the Supreme Pontiff, either expressed or tacit. They lacked expressed consent; for, as we stated in note 1 on page 183, Pius IX has repeatedly protested that he did not admit or know of such articles. They also lacked tacit consent; for, in addition to the fact that the Apostolic See has repeatedly reiterated its protests, it cannot be the case that a right arises against its own laws from silence; rather, the superior authority must be free to either tolerate or nullify what is done contrary to its laws. And it will be considered to consent if, knowing of acts contrary to its laws, and being able to prevent them by an express prohibition, it nevertheless remains silent. But if it is not able to prevent them, Article 61. Each Bishop, after hearing the Prefect, shall regulate the number and extent of these Succursals. Agreed conventions shall be subject to the Government, and shall not be carried out without the consent of the latter. Article 63. The priests who are pastors of the Succursals are appointed by the Bishop. Article 31. Vicars and assistants shall exercise their proper ministry under the protection and direction of the parish priests. They shall be approved by the Bishop, and shall be removed by him.

[*Latin ed. p. 185*]

185 churches are to be erected and defined. Therefore, it must be maintained that, from this delegation of the Supreme Pontiff, the power to establish manual churches was entirely excluded. Indeed, according to common law, a secular benefice is to be considered perpetual, unless the contrary is demonstrated by clear evidence. However, if this provision, which allows for the revocation of such appointments at the will of the bishop, has been applied to as many churches in Gaul as possible in an illegitimate manner, it must nevertheless be considered legitimate today, until otherwise decided by the Apostolic See, as we shall see below. Therefore, whatever may be the question of whether they could or even should have abandoned this provision in the past, it is now certain that it does not belong to the bishops to change it; because the Apostolic See has reserved this power for itself, through recent responses. The rectors of the dependent parishes had already begun to complain that the bishops had not yet abolished the provision for revocation at will. And several supplications had already been presented to the civil government, in order that the organic articles might be weakened in that part where they allow for such a provision, and it is not to be considered that the government consents to this by remaining

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silent. Indeed, it is clear to no one that it is not within the power of the Supreme Pontiff or the Bishops to change, or to annul or suppress, the decrees, decisions, and ordinances of the civil authority with regard to ecclesiastical matters, if they cannot approve of them; and therefore, according to the rules of law, consent is not presumed. With these premises, repeating the question, it must be concluded that the provision for the revocation of appointments at the will of the bishops was introduced illegitimately. This introduction is not hindered by the fact that the bishops were the founders of these parishes; for these bishops erected new parishes by the delegation of Pius VII, defining the boundaries of each, but they did not assign an endowment from their own resources. And therefore, they could not subject the new parishes to the condition of manuality or revocability at will, by virtue of the title of foundation; since the same Pius VII assigned to them, as an endowment, pensions to be paid by the government according to an agreement (1). It must also be noted that the same Pontiff remained completely silent regarding manuality, when he delegated the bishops to erect new parishes (1), and the government of the Republic could claim the title of patronage for itself: for the endowments which it decided to give to the new parishes were not taken from the property of the government, but from the ecclesiastical property, which the same government had seized and declared national. Hence, the new parishes, which were to be erected according to the Concordat, were perhaps called parishes of justice and peace; because in this way the government restored something to the Church, thereby contributing to its subsistence, for the peace and tranquility of the faithful.

[*Latin ed. p. 186*]

186 APPENDIX II. Concerning the removability of many parishes in France (1). The government did not disregard the petitions; and on this matter, it sent circular letters to all the Bishops, expressing its opinion. Then, the Archbishop of Bordeaux informed the Holy See of the government's decision. The Bishop of La Rochelle (-Saintes), however, requested instructions from the Holy See concerning the response to be given. At the same time, he sent to the Holy See writings from two theologians; one arguing for removability, and the other arguing against it. The Most Holy Congregation of Councils seriously considered the arguments at its meetings on March 21, 1844, but did not resolve the question, having before its eyes the condition of the Church in relation to the government of France. Indeed, the change of succursal parishes into permanent parishes could not take place without the intervention of civil government; which would easily claim the same rights that it has in other matters. Therefore, this change could not be made without seriously harming the independence of the Church. For these and other weighty reasons, the Most Holy Congregation left the question unresolved.

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However, with the approval of Pope Gregory XVI, it ordered the Eminent Prefect to send letters to the Bishop of La Rochelle, in which it would be explained that the judgment was suspended, and that the Holy See desired that the Bishops should exercise moderation and charity towards the rectors of succursal parishes, and that they should not remove them without a serious reason. However, these letters, for reasons unknown, were never sent by the Eminent Prefect of that same Congregation. In the meantime, the Bishop of Liège (2) in 1845, proposed the same question to the Holy See, in the form of a case of conscience: namely, he asked whether the rectors of succursal parishes are obligated to obey when the Bishop recalls or transfers them. In his own words: "Most Holy Father, the undersigned Bishop of Liège, with all due reverence, requests that the following doubt be examined, and that, for the sake of maintaining unity among the clergy in the diocese, and for the peace of the Church, a solution be communicated to him: Whether, given the present circumstances, in regions in which, as in Belgium, sufficient civil laws have not been enacted to allow for the change, this [change] is valid and obliging, until another..."

(1) It was reported that in France, there were 28,822 succursal parishes, and 3315 titular parishes.

(2) In the territories of Belgium, Savoy, and Geneva, the same distinctions between permanent and removable vicars are still maintained, as they were at the time when these territories were under the government of France.

[*Latin ed. p. 187*]

IX, n. 187 » S. The arrangement and discipline established by the Congregation for Affairs of the Church, following the Concordat of the year 1801, concerning the jurisdiction granted to Bishops for the care of souls, is subject to the will of the aforementioned person; and if they are recalled, and others are sent in their place, they are bound to obey. Furthermore, the Bishop of Usküb has been granted the authority to recall or transfer rectors, but not frequently, and only with due prudence, so that the stability of the sacred ministry may, as far as possible, be maintained, considering the circumstances of these matters.

S. Congregation for Affairs of the Church, Ep. and Reg. Following a hearing, the Most Holy Father, on the 2nd of the month following the report submitted by the Under-Secretary of the same Congregation, after hearing the account written below, and with the vote of the Most Reverend Fathers, on the 1st of May, 1845, the Most Holy Father, having carefully considered the matter, and for the reasons that moved his heart, approved the following proposal submitted in writing to the Cardinal Prefect of the aforementioned Congregation: "Regarding the subsidiary churches, concerning which action is being taken, no change shall be made until otherwise determined by the Holy See." (Lib. Dec. 188, page 190, Cardinal

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Popolani, Prefect)

This very matter was again raised in the year 1864 before the Holy See, at the request of the Bishop of Évreux, who condemned the work entitled "Réhabilitation du desservant," written by a priest named Dagomer. Pope Pius IX referred this matter to the Sacred Congregation.

The Most Holy Father entrusted this matter to the Sacred Congregation of the Council.

[*Latin ed. p. 188*]

488 APPENDIX II. May 1, 1845, a response concerning the same matter was given to the Bishop of Liège. Rome, October 5, 1864. (A. Cardinal Quaglia, Prefect; Svegliati, pro-Secretary.) From these responses of the Supreme Pontiffs Gregory XVI and Pius IX, it is therefore easily understood, as we have indicated above, that the discipline concerning removability is today legitimately established and should be maintained. Indeed, it is stated in the response of Gregory XVI: "The Most Holy [Pope] benignly approves that in the governance of dependent churches, no change be made, until otherwise decreed by the Holy Apostolic See. And therefore, neither is it permitted to the Bishops to abandon it, and the rectors of dependent churches are obligated in conscience to obey when they are removed by their respective Ordinaries. Those who are judged to do otherwise, as the Bishop of Liège explained in a painful letter, do so, with very few exceptions, imprudently and paternally."

FROM THE HOLY CONGREGATION OF RITES, DECREE: Concerning the canonization of the Blessed John Baptist De Rubeis, Confessor, of the Collegiate Basilica of Santa Maria in Cosmedin.

CONCERNING THE QUESTION: "If, with the approval of two miracles having occurred after the veneration of the aforementioned Blessed One was granted by the Apostolic See, may the solemn canonization of him proceed safely?"

The Blessed John Baptist De Rubeis, an outstanding example of an evangelical minister, shone brightly in the City in the preceding century. He dedicated himself entirely to the salvation of souls, always working diligently. Impatient, swift, and tireless, he instructed, with unwavering patience, the uneducated and the vagrant, leading them to the path of salvation through frequent reception of the Sacraments, and through his charity, he saved many souls. Furthermore, he was a faithful worker in the vineyard of the Lord.

[*Latin ed. p. 189*]

Regarding the matter of the Servant of God, it had been so thoroughly investigated that God manifested wondrous portents, which, through his intercession, occurred shortly after the solemnities of his Beatification. These, as is customary, were carefully examined, and in the Congregation of Sa-

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cred Rites, Our Most Holy Lord Pope Leo XIII, on the nineteenth day before the Kalends of January, in the year 1879, solemnly approved them by decree. Before the Blessed John Baptist De Rubeis can be publicly venerated with the honors due to Saints, according to the statutes of this sacred court, it must be inquired whether it is fitting to proceed to his canonization. Therefore, in the general assemblies of the Congregation of Sacred Rites, held before Our Most Holy Lord Pope Leo XIII on the eighth day before the Ides of March of this year, the following question was proposed: "Whether, with the approval of two miracles already granted after the veneration granted by the Apostolic See, it is fitting to proceed to the solemn canonization of the Blessed John Baptist De Rubeis?" The Most Reverend Cardinals presiding over the Sacred Rites, and the Consultor Fathers, by unanimous vote, responded that it is fitting to proceed. Therefore, the Supreme Pontiff, again imploring the divine light of humility, and judging that the Blessed John De Rubeis will obtain greater peace in heaven, the more his glory is increased on earth, decided to confirm the vote of the Sacred Congregation. Accordingly, on the Fourth Sunday of Lent, with the salutary Host offered with fervor, he went to the Vatican Basilica and received the Most Reverend Cardinal Domenico Bartolini, Prefect of the Congregation of Sacred Rites, and the Most Reverend Cardinal Miecislaus Ledochowski, Relator of the Cause, as well as the Reverend Father Lawrence Salvati, Promoter of the Holy Faith, and the undersigned Secretary, and, in their presence, declared that it is fitting to proceed to the solemn canonization of the Blessed John Baptist De Rubeis." This decree was ordered to be made public by being entered in the Acts of the Congregation of Sacred Rites, and Apostolic Letters were to be issued under the seal for the celebration of the solemnities of canonization, on the sixth day before the Kalends of April, in the year 1881.

D. CARD. BARTOLINIUS

Prefect of the Sacred Rites.
[Space for Seal]
Placidus Ratti
Secretary of the Sacred Rites.

[*Latin ed. p. 190*]

490 DECREE of Brundisin. Concerning the canonization of the Blessed Lawrence of Brundisin, a priest of the Order of Friars Minor of the Most Holy Francis of Assisi, Capuchin. CONCERNING THE DOUBT: Whether, and concerning which miracles, it is established in the case and regarding the effect of which we are speaking? Indeed, among the members, whom the Franciscan Capuchin family justly boasts, both for the sanctity of his life, for the labors of his apostolic ministry, for his knowledge, and for the

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duties of ecclesiastical dignity, the Blessed Lawrence of Brundisin must certainly be esteemed. For he acquired great authority among his brethren through the most careful observance of discipline, the love of evangelical poverty, and the pursuit of Christian perfection; even more so because he excelled in all things through universal doctrine, keenness of intellect, and a singular perspicacity in affairs. Therefore, advanced to the first duties of the institute, he administered with the greatest prudence, for the example of all, and for the benefit of the religious family. Indeed, perceiving such virtue and skill in affairs, and such strength of spirit, the Supreme Pontiffs entrusted him with the most serious and most important affairs of the Church. First, he was sent to Germany and Bohemia by Clement VIII, to resist the heretics: which he happily accomplished, with much labor and peril, trusting only in God, especially through the example of his austere life, and through eloquent sermons, by which he brought many heretics back into the bosom of the Holy Catholic Church, and strengthened the faith of the people, and aroused piety: truly powerful in deed and word. Subsequently, by Paul V, he was sent as a legate to Spain, to the King, where he firmly established a treaty and alliance among the German Princes against the spreading heresy, with remarkable skill. Furthermore, with invincible constancy of spirit, and with heavenly help, having so excellently merited in the cause of Christ, he returned to his monastery, living in humility of spirit, constantly devoted to prayer, and chastising his body, leading each brother rather by the example of virtues and obedience to the rule, than by authority. Although, indeed, he possessed so many and such great...

[*Latin ed. p. 191*]

DECREE 19: Weary from legations and journeys, and weakened by infirmities, he is again sent as a legate to the King of Hispaniae; and since, with the charity with which he was moved towards God and his neighbor, he had devoted himself entirely to the service of the Church, and although foreknowing the imminent approach of divine death, he undertook a long journey to Lusitania; but when he arrived at the principal city of the kingdom, he was struck by a grave illness, which, bringing him to the very end, he fell asleep in the Lord with a joyful spirit and a cheerful countenance, on the twenty-second day of July, in the year 1619. However, this industrious, unwearied, and zealous servant of the Christian republic, distinguished by his observance of regular discipline, his perfection of virtues, and the testimony of miracles, was solemnly enrolled among the Blessed by Pope Pius VI with a solemn decree on the first of June, 1783. The family of Capuchin Franciscans, rightly concerned about the glory of so great a member, as time permitted, after obtaining permission for the veneration of the same, initiated the Apostolic Process concerning the miracles obtained through the intercession of the Blessed Lawrence. And the validity of these was

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recognized on the fifth of October, 1783. Subsequently, proceedings were initiated concerning two proposed miracles; and the first took place on the fifth of January, in the year 1787, in the offices of the Most Reverend Aloysius Bilio, Bishop of Sabina, Relator of the Cause. The miracles were again discussed in the Preparatory Congregation in the offices at Vatican in the year 1788, on the thirteenth of September. Finally, in the general meetings held before the Most Holy Pope Leo XIII in Vatican on the seventeenth of January, in the year 1789, the aforementioned Most Reverend Aloysius Bilio, Relator of the Cause, presented the question: "Whether, and concerning which miracles, there is sufficient evidence in the case and to the effect of what is being considered." The Most Reverend Cardinals entrusted with the preservation of the Sacred Rites, and the individual Consultors, expressed their opinions on the proposed question. After they had been heard, the Most Holy Pope, before giving the oracle of his mind, encouraged all to continually implore the grace of divine light in this most serious matter. Having implored the illumination of the heavenly Spirit, His Holiness, on this Sunday within the Octave of the Nativity of the Virgin Mary, and to the glory of her name, received in the noble hall of the Vatican Palace the Most Reverend Camillus Di Pietro, Bishop of Ostia and Velletri, and Dean of the Sacred College, in place of the Most Reverend Dominic Bartolini, Prefect of the Congregation of Sacred Rites, who was absent from the city, and the Most Reverend Aloysius Bilio, Bishop of Sabina, Relator of the Cause, together with Father Lawrence.

[*Latin ed. p. 192*]

192 DECREE: The Reverend Father Salvati, Promoter of Holy Faith, and I, the undersigned Secretary of the same Sacred Congregation, and those present, decreed that it is established that two miracles have occurred in the third category, namely: the instantaneous and perfect healing of the boy Peter Paul Friggeri from an incurable white tumor in his left knee, accompanied by bone decay; and also: the instantaneous and perfect healing of Mary Angela Salat and Trull from a malignant and prolonged dermatosis with pustules and ulcers throughout the body, especially confluent on the legs, and from a debilitating cachexia. Furthermore, the Most Holy Lord, moved by special circumstances never before encountered, and dispensing from the usual procedure regarding the final doubt, decreed: That, with the approval of the two miracles following the granted indulgences, it can be proceeded with to the solemn canonization of Blessed Lawrence of Brindisi. This Decree was ordered to be made public, to be recorded in the acts of the Sacred Congregation of Rites, and to dispatch Apostolic letters under seal concerning the solemnities of the canonization whenever they are to be celebrated, on the third of the Ides of September of the year 1874.

To the Most Reverend and Illustrious Lord Cardinal Dominic Bartolini, Prefect; Cardinal Di Pietro, Bishop of Ostia and Velletri.

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In place of the Seal: Placidus Malli, Secretary of the Sacred Roman Congregation.

NOTE: The Decree concerning the solemn canonization of Blessed Joseph of Cupertino is found in Volume VII, page 204. In the next fascicle, we will present the Decree concerning Blessed Clara of the Cross of Montefalco.

[*Latin ed. p. 193*]

193 FROM THE CONSISTORY ACTS, CONCERNING THE CONSISTORY HELD ON NOVEMBER 18, 1881. Most Holy Father, when His Eminence Cardinal Mertel observed the Diaconate of Saint Mary in Via Lata, having relinquished that of Saint Eustachius, he proposed the following sees: THE PATRIARCHATE OF WESTERN INDIA, vacant due to translation to the metropolitan see of Caesarea, for the Most Reverend and Illustrious Lord Francis de Paula, with the title of Saint Thomas in Parione, of the Sacred Roman Edict, a Cardinal Priest, and the Reverend Fathers Benavides and Navarrete, with the favor of the Reverend Father Joseph Moreno and Mazon, recently Bishop of Cuenca in Spain, for presentation to the Most Serene King of the Catholics. THE METROPOLITAN CHURCH OF URBINO, vacant due to the death of the Most Reverend Alexander Angeloni, the last Archbishop, who died outside the Roman curia, with the favor of the Reverend Father Anthony Mary Pettinari of the Order of the Friars Minor Observant of Saint Francis, hitherto Bishop of Nuceria, who, through the benevolence of YOUR HOLINESS, was translated to the same Church of Urbino, in the fourteenth district, section CLXI. THE METROPOLITAN CHURCH OF VALLISOLETA, vacant due to the death of the Most Reverend Ferdinand Blanco and Lorenzo, the last Archbishop, who died outside the Roman curia, with the favor of the Reverend Fathers Benedict Sans and Forés, hitherto Bishop of Oviedo; who, through the benevolence of YOUR HOLINESS, was promoted to the same Church of Vallisoleta, for presentation to the Most Serene King of the Catholics. THE ARCHIEPISCOPAL CHURCH OF THESSALONICA, in the parts of the infidels, vacant due to the assignment of the title of Saint Mary of Victoria, made to the Most Reverend and Illustrious Lord Lewis, of the Sacred Roman Edict.

[*Latin ed. p. 194*]

£94 FROM THE CONSISTORY ACTS: Cardinal Jacobini, with the favor of the Reverend Father Ferdinand Capponi, formerly Bishop of Volterra. He was also appointed as Coadjutor with future succession, the Reverend Father Paul Micaleff, Archpriest of Pisa, who, expressly giving his consent to this, requires the assistance of another due to his infirm health, for the pontifical and other pastoral duties, so that these may be properly and fruitfully carried out in the service of the Lord in that city and archdiocese.

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THE CHURCH OF WERHBOSNIA: Established by the HOLY SEE through Apostolic Letters entitled "Ex hac augusta Principis Apostolorum Cathedra," dated July 3rd, 1881, endowed with metropolitan honor in Bosnia and Herzegovina, and vacant since its original erection, with the favor of the Reverend Joseph Stadler, a priest of the archdiocese of Zagreb. The city of Seraium, commonly known as Sarajevo, is located in the heart of the region of Bosnia, and its position and location offer great convenience to travelers and merchants, providing Catholics with greater advantages than other cities. Furthermore, Catholic bishops have previously held a seat in the town of Werhbosnia located within this city. According to the aforementioned Apostolic Letters, it has been raised to an archiepiscopal and metropolitan see, given the title of Werhbosnia, and the city itself has approximately thirty thousand inhabitants, of whom nearly two thousand profess the Catholic religion, under the present temporal rule of the aforementioned Most Serene Emperor and King. There is no church in the city of Seraium, but only a newly erected chapel. According to the aforementioned Apostolic Letters, the Archbishop of Werhbosnia will have three suffragan bishops, namely the bishops of Banialucensis, Mandetriensis, who will bear the title of Dumnensis or Dalminiensis, and Mercanensis and Tribuniensis, which the Bishop of Ragusinus will administer for the time being until otherwise provided for. A metropolitan chapter will be established; for the present, the care of souls is exercised only by the Fathers of the Order of the Friars Minor Observant of St. Francis. A house is available for the Archbishop. The revenues, not yet specified in the books of the Chamber, amount to eight thousand florins of Austrian currency. Monasteries of men or women, lay sodalities, hospitals, and a charitable foundation are needed; and a provincial seminary for clerics must be established as soon as possible. The territory of the archdiocese is very extensive and includes sixty-six parishes. The Reverend Joseph Stadler, a graduate of the Hungarian and German College near the Gregorian University in Rome, studied philosophy and sacred theology.

[*Latin ed. p. 195*]

FROM HISTORICAL RECORDS: "Doctoral degree conferred upon Donatus, who is attached to the clergy of Zagreb. Having been appointed Prefect of the diocesan seminary and of the Archiepiscopal Lyceum of Zagreb, and having been chosen as Professor of metaphysics and dogmatics, he has recently resigned from his position as Professor of fundamental theology at the newly established University of Zagreb. He has been appointed to the notarial office of the matrimonial tribunal, and as honorary assessor of the Consistory, and has been included among the pre-synodal examiners.

THE CATHEDRAL CHURCHES OF LUWEN-SARZANEN and BRUGNATEN are perpetually and canonically united, by reason of the death of the Most Reverend Joseph Rosati, the last Bishop of those churches, who

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died outside the Roman Curia, with the favor of the Reverend Father Hyacinth Rossi, of the Order of Preachers, currently Bishop of Leuca in the mission territories.

THE CATHEDRAL CHURCH OF NICO-SIEN-HERBITEN is vacant, by reason of the death of the Most Reverend Melchior Lo Piccolo, the last Bishop of that church, who died outside the Roman Curia, with the favor of the Reverend Bernard Cuzzucli, a priest of Palermo. He was born of legitimate, Catholic, and honest parents in Palermo, and having reached the forty-sixth year of his age, he received Holy Orders and was recently awarded a doctoral degree in sacred theology. Having been appointed Secretary by the Archbishop, and having been a Canon of the Metropolitan Church of Palermo, as well as a pre-synodal examiner, he has recently resigned, and has been included among the intimate members of His Holiness's household.

THE CATHEDRAL CHURCH OF PINB-ROLIEN is vacant, by reason of the death of the Most Reverend John Dominic Vassarotti, the last Bishop of that church, who died outside the Roman Curia, with the favor of the Reverend Philip Chiesa, a priest of the diocese of Alba, who was born of legitimate, Catholic, and honest parents in the town of Montatae-Fangi, in the diocese of Alba, and having reached the second year beyond his fortieth year of age, he received Holy Orders and was recently awarded a doctoral degree in sacred theology. He was elected Canon-Parish Priest at the church of Saint John the Baptist in Alba, and has served as Prefect of Moral Instruction, and as Rector of the diocesan seminary, and there he has served as Professor of Moral Theology. He has been added among the synodal examiners, and has been elevated to the third position of dignity in the Cathedral of Alba until the present time.

THE CATHEDRAL CHURCH OF ASTEN is vacant, by reason of the death of the Most Reverend Charles Savio, the last Bishop of that church, who died outside the Roman Curia, with the favor of the Reverend Joseph Ronco, a priest of the archdiocese of Turin, who was born of legitimate, Catholic, and honest parents in the place of Leynici, in the archdiocese of Turin.

[*Latin ed. p. 196*]

496 FROM THE CONSISTORY ACTS, he, having surpassed the fiftieth year of his age, was born in Ceseos. Ordained to the priesthood, and previously awarded a doctorate in sacred theology, he had at one time performed the office of assistant pastor, and until now has been the Prior and External Vicar of the parish of Santa Maria Maddalena in the town of Villafranche near the Po, in the archdiocese of Turin, having renounced this office some years ago. The CATHEDRAL CHURCH OF MONTE ALBANO, vacant due to the death of the Most Reverend Theodorus Legain, the last Bishop of that see, who died outside the Roman curia, was, with the favor of

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the Most Reverend Adolphus Josue Frederick Fiardi, a priest of the diocese of Valentia, nominated by the most illustrious Julius Grevy, President of the Republic of France. The Reverend Adolphus Josue Frederick Fiardi was born in the town commonly called Lens-Lestang, in the diocese of Valentia, from legitimate, Catholic, and honorable parents, and has reached the sixtieth year of his age. After serving in the secretarial office of his own Bishop, he later took up the care of souls, serving as a Vicar Curate, and also as a Pastor in various churches in the dioceses of the country. He has been, until now, the General Vicar for spiritual matters for the diocese of Oran, and has renounced this office, as well as his position as a Canon in the Cathedral. The CHURCH OF MANDETRIEN, with the attached title of Dumnensis, also called Dalminiensis, was raised to the dignity of a Cathedral by the Holy See through Apostolic Letters dated July 11, 1881, in Herzegovina, and has been vacant since its original establishment, with the favor of the Reverend Father Paschal Buconjic, of the Order of the Friars Minor Observant of Saint Francis, who is currently the Bishop of Magidani in the lands of the infidels. Mandetrium, or Andetrium, commonly known as Mostar, a Mediterranean city in Dalmatia and the capital of the district, located on the Narenta River in Herzegovina, offers its inhabitants greater advantages than other regions of that country due to its pleasant location and lively commerce. It has been raised to the status of a Cathedral through the aforementioned Apostolic Letters, and is inhabited by over ten thousand citizens, of whom about a third profess the Catholic religion, under the current temporal dominion of His Imperial Majesty Francis Joseph I, Emperor of Austria, King of Bohemia and Hungary, the Apostolic King. In order that the illustrious Cathedral of Dumnensis, Duvno or Dalminiensis, from which the name of the Dalmatians originates, which was formerly endowed with an Episcopal dignity, may remain in memory, the Bishop of Mandetrium will also bear the title of Dulmensis or Dalmif, as mentioned in the aforementioned Apostolic Letters.

[*Latin ed. p. 197*]

FROM THE CONSISTORIAL ACTS, 197, month unspecified. The parish church, having fulfilled its primary function as a rector's residence, Professor, and for the benefit of the parish, has been elevated to the status of a cathedral by Apostolic Letters, and the Archbishop of "Werhbosn" is granted the title "Infinitus amor." The cathedral chapter is to be established, and the care of souls will be exercised by the Fathers of the Order of the Friars Minor Observant of St. Francis. A house for the Bishop's residence will be erected. Monasteries for men or women, lay sodalities, a hospice, and a charitable foundation are desired, and a seminary for clerics is to be established. The territory of the diocese extends widely and includes twenty-seven parishes.

TABASQUEN. The church, located in the Mexican territory and vacant

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since its original construction, has been favored by the Reverend Father Agustin Torres, a priest of the Mexican archdiocese, who, having been raised in the Catholic faith, with honest parents in the town, commonly called Alfajayucan, and having surpassed the age of sixty years, has been appointed to the archdiocese mentioned above. The parish church, dedicated to St. James the Greater, spacious and worthy, with its parish status and title preserved, has been elevated to the status of a cathedral by the aforementioned decree, and the Archbishop of St. Faith of Bogota is its superior. The cathedral chapter, not yet established, will consist of two dignitaries, the Dean of the Presbyterate and the Treasurer, two Canons of the Office, namely the Penitentiary and the Theologian, two others of the Merced, and four Chaplains or Mansionaries. The Canons, formerly belonging to the Congregation of St. Vincent de Paul, will diligently perform their ecclesiastical duties. In the seminary of Catalina and in the college of philosophy, as before, they will arouse the zeal of the students for the care of souls.

[*Latin ed. p. 198*]

198 FROM THE ACTS OF THE COUNCIL, the same is exercised in the Cathedral, where there is not only a baptismal font and a sacristy adorned with sacred furnishings for performing divine offices, and richly decorated for pontifical ceremonies, but also a choir and an organ, a bell tower with bells, and outside the city, a cemetery. Three are mentioned as belonging to the parish of Tunja, equipped with a baptismal font, and there are no monasteries for men, but two for women, as well as institutions of public utility, a hospital, a college, schools for both sexes, and a seminary to be established. The extent of the diocese is quite wide, encompassing provinces now called by their vernacular names: Tunja, Velez, Tundama, Socorro, Casanare, and seven hundred thousand souls. The Reverend Severus Garcia, born of legitimate, Catholic, and honorable parents in the parish commonly called Somondoco, in the province of Tunja, and of the archdiocese of St. Eide of Bogota, has reached the seventieth year of his age. He has been devoted to the care of souls in various parishes, and was also appointed as an examiner for the synod within that archdiocese, then as General Vicar in spiritual matters, and as Governor for the same archdiocese, and has now resigned from his position as Archdeacon in the metropolitan area. THE EPISCOPAL CHURCH OF LAMPSACEN, under the Archeparch of Cyzicus, is vacant due to the death of the Most Reverend Joseph Crispi, the last bishop of that see, who died outside the Roman Curia, by the favor of the Reverend Joseph Candido, a priest of the diocese of Lyciensis; who was also appointed as a coadjutor with future succession to the Reverend Father Hyacinth Mary Barber, of the Order of Preachers, Bishop of Neocastle. The Reverend Joseph Candido, born of legitimate, Catholic, and honorable parents in Aletii, has surpassed the forty-fourth

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year of his age. Privately, in his home, and publicly in the Institute, Lyceum, Gymnasium, and Seminary of Lyciensis, he has successively taught mathematics, physics, natural sciences, and the Greek language to young men, and has been chosen as President of the provincial orphanage. THE EPISCOPAL CHURCH OF DOLICHEN, under the Archeparch of Hierapolis, is vacant due to the death of the Most Reverend John Dominic Barber, the last bishop of that see, who died outside the Roman Curia, by the favor of the Reverend Francis Mary Tregaro, a priest of the diocese of Vannes, who was also appointed as a coadjutor with future succession to the Reverend Father Charles Frederick Rousselet, Bishop of Sagiensis, with the expressed consent of the aforementioned Bishop of Sagiensis, and the most illustrious man, Julius Grevy, of the Gallic Republic.

[*Latin ed. p. 199*]

199 FROM THE ACTS OF THE CONSISTORY: The Episcopal Church of Clugé. Reverend Father Francis Mary Tregaro, born of legitimate, Catholic, and honorable parents in the town, commonly called Peillac, of the diocese of Vannes, has surpassed his fifty-seventh year. Having formerly served as a vicar of the parish of Vannes in the diocese, and as the first chaplain emeritus of the Republic of France, he has now resigned from his position as General Vicar in spiritual matters of the diocese of Vannes.

The Metropolitan Episcopal Church, under the Archbishop of Selêucia, in territories among the infidels, is vacant due to the death of Bishop Daniel Comboni, the last of that episcopate to have died outside the Roman Curia, and is filled by Reverend Father Joseph Benedict Salvator de la Reta, a priest of the diocese of St. John of Cuyo, who was also appointed as an Auxiliary to Reverend Father Venceslaus Achaval, the Bishop of St. John of Cuyo, in the Confederation of Argentina. Reverend Father Joseph Benedict de la Reta, born of legitimate, Catholic, and noble parents in the city of Mendoza, in the diocese of St. John of Cuyo, has surpassed his fiftieth year. Having taken solemn vows in the Order of Friars Minor Observant of St. Francis, and having assumed the name Salvator, he was recently ordained to the priesthood. Having been duly dismissed from his order for just reasons, he has for many years governed the province of Mendoza as a missionary, as a vicar forane, and as the rector of the principal parish church of that diocese. He has also served as a pastoral visitor, as a delegate to the treasury, and as an elected member of the governing council, and he completed the sacred church of Our Lady of Loreto in his homeland.

NITHEN. Under the Archbishop of Philadelphia, in territories among the infidels, is vacant due to the death of Bishop Michael Anthony Anfossi, the last of that episcopate to have died outside the Roman Curia, and is filled by Reverend Father Charles Mennella, a priest of the diocese of Ischia, who was also appointed as an Auxiliary to Reverend Father Francis of Niccola, the Bishop of Isola. Reverend Father Charles Mennella, born of le-

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gitimate, Catholic, and honorable parents in the place called Casamicciola, in the diocese of Ischia, has reached his forty-seventh year. Having already taught humanities and philosophy in the diocesan seminary, he has been elected as Director of Studies there, and has been added to the list of examiners for the synod, and has served as a Consultor Judge in ecclesiastical matters, and as a Cathedral Canon of Ischia, having renounced his honors.

[*Latin ed. p. 200*]

200 FROM CONSISTORY DECREES, with the favor of the Most Reverend Father Innocent, Bishop of Scopi, in the vicariate of Maria Yeregui, for the faithful. By a papal brief, the following were conferred upon the Church: THE ARCHDIOCESAN CHURCH OF SELIMBRIE, in the territory of the infidels, to the Most Reverend Father Placido Kasangian, an Armenian. THE ARCHDIOCESAN CHURCH OF ATTALIE, in the territory of the infidels, to the Reverend Father Sten, in the territory of the infidels, to the Reverend Father Ioseph d' Annibale, a canon and general vicar of the Diocese of Reate. THE EPISCOPAL CHURCH OF CASSIEN. THE CATHEDRAL CHURCH OF TREVI, in the territory of the infidels, to the Reverend Father Gaudentio Bonfigli of Matelica, of the Order of the Observant Minor Friars. THE PARISH OF REN, in Borussia, to the Reverend Father Michael Felici Horum, a canon, archpriest, and parish priest in the Diocese of Argentia. THE PARISH OF LIEN, in the territory of the infidels, to the Reverend Father Henry Northrop, Apostolic Vicar of Carolina Septentrionalis. To the Reverend Father Ioann Kupelian, an Armenian. THE CATHEDRAL CHURCH. THE EPISCOPAL CHURCH OF ROSAFUL. THE EPISCOPAL CHURCH OF MOSINO, in Borussia, to the Reverend Father George Kopp, domestic prelate to His Holiness and general vicar of his Diocese of Hildesheim. THE METROPOLITAN CHURCH, in the territory of the infidels, to the Reverend Father Nicholas Joseph Camilli, of the Order of the Conventual Minor Friars, Apostolic visitor of Moldavia. THE CATHEDRAL CHURCH OF CARY.

[*Latin ed. p. 201*]

20. FROM THE HOLY CONGREGATION OF THE COUNCIL, INDULGENCE. August 14, 1880. Through a summary of petitions, COMPENDIUM FACTI. The Canon of the Collegiate Church of the Archdiocese F. humbly requested, through a suppliant letter, an exemption from the service of the choir, due to serious infirmities of health, especially on account of a notable weakening of his voice: by which he is hindered from participating in the choir. The Chapter desires that, if he cannot raise his voice in speech, he should nevertheless not be excused from attending the choir. The Archbishop abstains from giving his vote, adding that whatever the Holy Congregation of the Council may decide will be acceptable to him. In response to these petitions, a decree was issued on June 28: - According

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to what is presented, it does not seem expedient. The petitioner did not acquiesce, and repeated his petitions, so that, with this decree revoked, he might obtain the requested grace, stating: that he had served the choral service of the Collegiate Church for twenty years and a half; and that now, weakened by age and prolonged infirmity, he could no longer perform this duty.

SYNOPTIC DISCUSSION. Although the prescriptions of the Holy Canons and the Holy Council of Trent strictly command all Canons and those who hold benefices with residence, to render service to their Church, nevertheless, the force of this prescription is such that it should never prevail over natural law. Hence, the Canons provide that infirm and ailing individuals should be granted legitimate exemptions.

[*Latin ed. p. 202*]

202 INDULGENCES: An exemption from personal choral service, lest the fruits of prayer and daily distributions be lost. Chapter One, concerning non-resident Clergy, paragraph 6. Pope Boniface VIII, after certain prohibitions against clergy residing [in a place], but not attending divine services, exempted those from this censure who were excused by infirmity or a just and reasonable bodily necessity, or by evident benefit to the Church. This was confirmed by the Council of Trent, Session 24, Chapter 12, concerning Reforms. Fagnanus, in Chapter "Licet," paragraphs 135 and 150, and Ferraris, under the word "Distributions," article 1, number 12, agree with this. Furthermore, there is a constant and universal practice of the Sacred Congregation of Clergy, from which it appears that, whenever there is proof of infirmity, based on the sworn testimony of physicians, an indulgence to be excused from the choir, as necessity requires, is never refused, as is seen in the documents from Urbino, dated September 18, 1802; from Fermo, dated September 13, 1862; and from Rome, in the "Jura Canonica," 1703. Indeed, the infirmity with which the petitioner suffers is clearly such that it warrants granting him the requested indulgence, as attested by the sworn testimony of a physician. The petitioner, besides a complete loss of his voice, also suffers from very serious stomach ailments, which are such that they even induce vomiting, as is confirmed by the sworn testimony of a physician. Moreover, nothing seems to contradict the granting of an absolute and complete indulgence, even if the Chapter desires the personal presence of the petitioner; indeed, the Chapter's opposition, given the proven infirmity, should be considered unjust and unreasonable, as testified by the resolution of the Sacred Congregation in the case of Piscieno, dated December 6, 1764, concerning Indulgences. Furthermore, if the petitioner's requests were rejected, as he has stated, he, after having rendered a laudable service to his Church for more than sixty years, would be forced to resign his canonry; which would be contrary to equity, not to mention justice, as declared by the Sacred Congregation in the afore-

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mentioned Piscieno case. Such a resignation, while harming the petitioner, would not benefit the Chapter, since the benefice would be assigned to the treasury.

RESOLUTION: The Sacred Congregation, on August 14, 1880, decreed: "For the sake of mercy, according to the request."

[*Latin ed. p. 203*]

2oa. PENSION. On the second day of September and the second day of December, 1880, a SUMMARY OF FACTS. The priest of Pompeii, the Archpriest, and the parish priest of the church dedicated to Saint John, both of which were presented to the more substantial parochial position in the month of May of the year 1876. From the Archpriest's parish, from which he was to depart, a simple benefice had already been taken, a benefice annexed to that same parish for nearly five hundred years. Therefore, in order to provide some appropriate aid to the parochial needs, and with the consent of the patron, the Ordinary decided to impose a pension of three hundred livres upon the aforementioned benefice, to be paid to the priest of Pompeii. Having requested and obtained permission for this, the Ordinary himself made a formal request, which was approved by the Most Blessed Father through the following rescript: "Having considered, etc., regarding the faculty of imposing an annual pension of three hundred livres upon the goods and revenues of the Curate's position, concerning which you have petitioned, it is to be paid annually to the priest of Pompeii, as long as he lives, in favor of the Archpriest for the time that the aforementioned parochial church of Saint John remains vacant, by the prudent and esteemed Bishop." Using this faculty, the Bishop imposed the pension with the same words and formulas as noted in the rescript, which the priest of Pompeii accepted, having previously, before the canonical institution to the position, obligated himself in writing to make the payments. Therefore, with Aloysius of Pompeii canonically promoted to the position, the Archpriestship of Saint John the Baptist became vacant, both in law and in fact. However, no one was found who desired it. Therefore, the Bishop, in place of the Archpriest, appointed a Vicar or Administrator to the aforementioned vacant parochial church, assigning to him all the revenues belonging to that church, as it is written in the letter of appointment: "with a suitable portion of the fruits of said parish, corresponding to the duration of your office."

[*Latin ed. p. 204*]

204. After a year had elapsed from the date of acquiring the property, the Curate, demanding payment of the pension, turned to the Prefect of Pompeii. The Prefect, seeking his own advantage, and with the favor of the Archpriest for the time being, interpreted the *Bulla* unfavorably, and gave a negative response, stating: that the pension imposed on the Prefecture was to be paid to the Archpriest of St. John the Baptist, and not to the

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Curate. Then the Curate appealed to the Sacred Congregation, in order to obtain payment of the pension. A legal dispute ensued. THE RIGHTS OF THE PREFECT. The defender pointed out that, "even if this were the case, the Archpriest of St. John, and if he were to act in court, could in no way obtain the aforementioned pension. For this pension was imposed due to an error regarding the revenues of the Prefecture, and if these were burdened by that pension, there would not even be enough left for the Prefect's necessities, so that he could live. The Court certainly erred when it estimated that the Prefecture had six hundred scudi free. For it is known from the experience of Pompeii itself and its predecessor, that the revenues of this parochial benefice scarcely reach 1300 scudi. From this it follows that if the praised Bishop had recognized the true state of affairs, he would not have imposed the pension. For the amount must be in accordance with the canons, so that it is sufficient for the comfortable and honorable support of the person; Ferraris, *Congrua*, n. 7. Therefore, the Prefect, writing to the Ordinary, declared that he was prepared to relinquish his administration, provided that he were paid a sum suitable for a decent livelihood, and for meeting the parochial expenses. But the Prefect's advocate argued that, if the payment of the pension were not permissible in the case of the Archpriest, it is all the more to be rejected in the present case, since he deals with a completely different person, and is not at all considered in the aforementioned decree. And indeed, it is not without legal basis that the aforementioned Prefect denies the pension to the Curate.

[*Latin ed. p. 205*]

The pension of $20 is a stipulated pension for the Archpriest-Parish Priest, but it perfectly corresponds to the disposition of Session 24, Chapter 18, concerning Reforms, of the Council of Trident, which states: "The Bishop ought immediately to provide suitable provision for a Vicar in the parish, if it should be necessary, with a proportionate assignment of the fruits and revenues of the parish according to his judgment." However, the Parish Priest and administrator does not receive a portion of the parochial revenues, but the entire income of the parish. Therefore, it does not seem equitable that, besides enjoying the entire revenues of the parish, he should also request a pension, which was granted to him in a particular manner and by a special decree of the supreme governor of the Church, only to him who holds the care of souls not precariously, but in a stable and permanent position. And this is indeed most consonant with the very words of the decree by which the pension was granted, not to the parish, but to the Archpriest-Parish Priest. Moreover, no one will deny that the administrator is not the true parish priest, nor can he be considered as such. Therefore, according to the literal interpretation of the decree, his request should be entirely rejected. Furthermore, a contrary interpretation would be utterly repugnant and must be completely eliminated. For we

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are dealing with a benefice to which is attached a burden, not merely lucrative, but entirely onerous; and therefore, the fruits of the benefice of the administrator are to be considered as the true reward for his labors. Wherefore, the imposition of pensions on such administrators is most repugnant and should be strictly avoided. In repugnant cases, the decrees of the Princes must be interpreted strictly, and no broader meaning should be attributed to them than that which is clearly deduced from the very words themselves. Indeed, the aforementioned Orator, the administrator himself, admits this with his actions. Perceiving the undoubted meaning of the decree, he requests that the most holy Prince would deign to include the administrator in those words, "for the benefit of the Archpriest for the time being." However, no one is unaware that it is the established practice of the Apostolic See that, in granting favors, the right sought by one should never harm another. Indeed, if the Pope were to order the payment of a pension to the administrator, he would clearly inflict an injustice upon the parish priest. Furthermore, it is the law that the burden of the pension is so great that...

[*Latin ed. p. 206*]

206. A pension is due, in whatever circumstance, such that, once imposed, a suitable provision would scarcely remain; and this, even if the beneficiary had consented to the imposition of the pension. Lotter, *de benefic.*, book 1, chapter 5, number 424, and S. C. in Arboren. Pensionis, September 21, 1816, §. As far as. However, as the Prelate himself declares, if an addition were made to be paid for the pension, taking into account the numerous taxes imposed by the ecclesiastical government on the goods, a suitable provision for his own honest sustenance would be lacking. Therefore, the Council of Trent, Session 24, chapter 13, concerning reform, decreed that parish churches which do not exceed the sum of one hundred ducats, according to the value of money, should henceforth be burdened with no pensions. This decree was amplified by Benedict XIII in the constitution *Quanta pastoribus*, on September 15, 1724, according to the edict of Innocent XII on November 11, 1692, namely, that in no way should the Ordinary of the place, or anyone else who collects from parish churches, even by virtue of lay patronage, burden these churches with pensions, except that the Pope reserves the faculty of imposing such pensions solely for the benefit and advantage of the fabric and ornaments of the aforementioned parish churches. Indeed, it is clear to everyone that a pension is to be paid not for the benefit of the collegiate and parish church, but for something entirely different. Therefore, even from this point, such an imposition would seem to be unsustainable by any law. This exception in the case of parish churches was introduced for the most just reason, since there does not seem to be a sufficiently ample portion for the parish priest, who is obligated to provide for the needs of his people, and who, in many cases, requires

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assistance.

DEFENSE OF THE ECONOMUS. Contrary to this, the patron of the economus maintains that, considering the deliberations, the prayers offered by the Most Reverend Bishop to the S. C. C., and the rescript issued concerning these matters, two things are manifest: namely, that the intention of the Bishop was to request the pension, and that the intention of the Sacred Congregation in granting the pension was that, whether the parish of St. John be conferred in title, in commendam, or as an economus, the parish provision would become more substantial. For the Bishop requested the pension, so that at least a portion of the expenses might be covered.

[*Latin ed. p. 207*]

Regarding the pension, 207, due to the insufficiency of revenues, the Sacred Congregation granted the faculty, because it had been established by the Bishop that it was practically impossible to provide a parish with a stable rector. Furthermore, the Bishop, anticipating the case that the parish could not be conferred as a titular see; and therefore, the Sacred Congregation also decreed that the pension should always be paid, because it was intended as an augmentation [of the salary], and this augmentation must necessarily be maintained, even for the Curate, because the pension did not remove all evils, but only a part, and even with this pension added, the salary would still be insufficient. Moreover, it notes that Pompeii himself, formerly the parish priest of St. John, in addition to the parish revenues, enjoyed a pension and a more substantial offering from Masses, yet he exerted every effort to have the prebend conferred upon him, implying that this could be sustained by the pension from the parish of St. John; but it is surprising how today this very pension is denied to the Curate, under the pretext that he is not an Archpriest, while both the Bishop, by requesting it, and the Sacred Congregation, by granting it, intend that the pension be given to him who cares for souls, whether he has obtained a titular parish, or whether it is in commendam or as an oeconomus. It should not be overlooked that the revenues of the prebend are not such that they cannot support a pension. For, setting aside the fact that the question of the revenues of the prebend is not presently at issue, it is recalled that the Vicar General has demonstrated with evidence that the revenues of the prebend are such that the prebendary should, in any circumstance, be able to pay a pension. Since the patron pays each canon annually a sum of fifteen hundred livres and more, completely free from any burden or tax, and since in any collegiate church the revenues of the prebend are double, it remains to be said that the prebend must certainly yield at least fifteen hundred livres free from any burden. It hopes that a favorable response

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will be given by the Sacred Congregation, so that the parish...

[*Latin ed. p. 208*]

208 The pension of Saint John's, without an Archpriest, and without a Curate-Economus, shall be maintained, which is also requested in the name of the parishioners, lest they be entirely deprived of a shepherd. Indeed, it is urgently established from the new documents presented in the summary that the revenues of the Archpriest of Saint John's, whether from the past century or from the present, are entirely insufficient for the necessary sustenance of the pastor: for in the past year, only 7:33, and in the current year, 3:78, were received by the Archpriest. With these premises, the Most Reverend Fathers were asked to determine the following question: Whether the pension established by the Holy See in favor of the Archpriest of the parish of Saint John's is to be paid also to the Curate-Economus of the same parish in such a case. RESOLUTION. The Holy Council, after deliberation on December 11, 1880, decided that the answer should be: Affirmative. From which, the following are gathered: I. It is a general rule that a debtor ceases to be obligated when he has been granted a just exception, and not repugnant to natural equity. II. To appear to make an exception repugnant to natural equity, as Pompeii argues, who maintains that the pension was attributed to the Archpriest for a time, but certainly not to the Curate-Economus. III. Pensions, from the part of the payer, are distinguished in law into real and personal: they are real insofar as they are imposed by reason, title, and dignity; but they are personal insofar as they are imposed upon the person holding the dignity, the thing, or the title.

[*Latin ed. p. 209*]

209 I V. The pension appears to be a personal benefit, on the one hand, from the perspective of the one paying it; because it is imposed upon the person of Pompeii, pertaining to his life; on the other hand, for the recipient, it should, in some way, be considered a real benefit, and this is because only the name of the office is mentioned, not the person. V. Therefore, the Economus has the right to receive the pension that is attached to the office, since, with regard to the parish office, there is no distinction between the Archpriest in office and the parish Economus (1). (1) That this pension should also be paid to the Economus curate, as wisely decided by the Sacred Congregation, can also be deduced from the reason for which the Ordinary imposed the same pension. For the Ordinary did this to provide assistance to the needs of that Archpriestal prebend; a reason which does not cease, even if the cure is vacant, nor if the Economus were wealthy from other sources. Because, just as he bears the entire burden of the parish, so likewise he has the right to all the revenues of the parish, unless otherwise provided for by a decree of the Bishop.

FUNERAL EXPENSES. On March 12, 1881, a summary of the facts.

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Within the boundaries of the parish of Ribalta Nuova, located near the city of C., a noble family, the C. family, owns a villa in which they usually reside for about eight months of the year, and for the remainder of the time, they are in the city, in the parish of St. James. In the year 1878, Maria, the wife of Caesar C., was struck by a serious illness, and, having received the Sacraments of the Church in due order from the rural parish priest, she passed away on September 7, after which the customary rites were performed for the rural parish priest, and the body was buried within the boundaries of this parish. When this came to the ears of the urban parish priest of St. James, in order to protect his rights concerning tithes and offerings, he sent a petition to the Sacred Congregation, requesting that, according to the statutes and the Acta, volume ZIV, page CLXI, 14...

[*Latin ed. p. 210*]

210. CONCERNING THE BENEFITS DERIVED FROM FUNERALS within the Diocese, the Most Reverend Prelates should deem it fitting to determine the restitution of those benefits which were received by the Parish Priest on that occasion. A Synopsis of the Matter. THE RIGHTS OF THE PARISH PRIEST WITHIN THE CITY. The aforementioned benefits derived from funerals pertain to the Parish. It appears, whether considering common law or diocesan statutes, that the following holds true. Regarding common law, it should be remembered that after the decree of Boniface VIII in chapter 3 of *De Sepulturis*, Clement [VIII] in *Dudum* §, and in *Vernum* in the same title, almost all Doctors of the Church have affirmed that the legal right which Parish Priests possess concerning the funerals of the deceased within the limits of the Parish does not depend on the material location, or on residence, or on accidental death, even when the Sacraments are administered, but rather on the spiritual office exercised by the Parish Priest while the Parishioner was alive. Regarding this matter, Reiffenstuel in *Ius Canon.*, book 3, title 28, number 6, states: "The Sacred Canons, concerning burial, do not consider the place where someone dies, but where, while alive, he was accustomed to receive the heavenly food." Van-Espen in *Iur. Eccl. univer.*, part 2, title 38, chapter 3, number 7, states: "The Parishioners, as far as burial is concerned, are those who reside within the limits of the Parish, so that they may receive the Sacraments of life within that Parish and so that the Parish Priest may administer them to them." Scarfantonius in *ad Ceccop.*, book 3, addition 48, number 82, states: "The territory of each Parish Priest is improper, and his jurisdiction, or rather, his parochial office, is not bound to a place, as is the jurisdiction of Ordinaries, but consists and is founded on the person of the Parishioners." Pignatellius in *Consult.* 48, number 22, volume 3, states: "Hence, within his own Parish, he has no right over another Parishioner, chapter 2, *de Paroch.* Fagnan, in chapter *Ne pro dilatione*, number 29, *De Poenit. et remiss.* But, on the contrary, he has every right

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over his own Parishioner, wherever in the universe." This is confirmed by Passerinius in *De stat. quaest.*, 187, article 4, number 311.

[*Latin ed. p. 211*]

OF THE EXPENSES OF FUNERALS 211 Fargna, De Iurepatr., part. 1, can. I and 2, eas. 2, no. 9; Navarrus, in Can. Placuit, no. 102, dist. 6; Diana, part. 9, tract. 7, misceli, resol. 62; Pignatelli, consult. 151, no. 6, and consult. 73, no. 54; Scarfantonius, loc. cit., no. 1, and following; Rota, coram Priolo, in Romana, iuris tumulandi, March 5, 1703, § His ita. Therefore, as Scarfantonius says in the aforementioned passage, no. 49, "he who dies in the countryside is not buried in the rural parish, but must be returned to his parish in the city, to which the right of burial belongs, according to the literal text" (in cap. Is qui De Sepult., no. 6, Pignat., consult. 63, no. 4, vol. 7; Nicol., lucub. civil, lib. 4, tit. 15, no. 19; Passerin., de Stat., dict. quaest. 187, art. 4, no. 347; Anacletus, lib. 3, tit. 28, no. 16, in fine). Pirhing teaches in lib. 3, tit. 28, no. 6, that no right belongs jointly to the parish. When someone, during a time of plague or war, transfers himself from the town in which he resides to a city, and dies there, the aforementioned opinion has been embraced by the Holy Office. This is testified by Ariminen, Iuris tumulandi et funeris, December 18, 1824, even though the funeral had been performed in good faith by the parish priest. It is best to briefly recount the case. The priest, Angelus Barbanti, during the Paschal season, went to the parish of the Most Holy Cross, outside the city, to hear the confessions of the faithful, and there he was suddenly struck by a disease and died. There, the funeral rites were performed, and the body was buried, and the expenses of the funeral were paid; however, the parish priest of the domicile objected, and the matter was brought before the Holy Office, and the following questions were proposed: I. To whom does the right of burial and funeral belong in this case? And, to the extent that it is affirmative, to the parish priest of the domicile. II. Is there a place for exhumation and restitution of the body in this case? III. To whom, and what expenses of the funeral must be returned in this case? To which the Most Reverend Fathers responded most wisely: To I, affirmatively, in favor of the parish priest of the domicile, namely, Ss. John and Paul. To II, it does not matter. To III, affirmatively, in all respects. Therefore, I firmly maintain, according to the established law, the right of burial and its expenses.

[*Latin ed. p. 212*]

212 CONCERNING THE EXPENSES OF A FUNERAL: It seems equally clear that the right to receive offerings for a funeral belongs to the parish priest, by reason of the spiritual ministry, which the parish priest provides to his parishioner during his lifetime, and that the right to perform the funeral and to receive the offerings of the funeral of the deceased Mary belongs to the parish priest of James, since she resided in that parish, and

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was accustomed to receiving the Sacraments there, as testified in the very document presented by the parish priest himself. For he stated that, while she was alive, Mary was accustomed to coming to the parish to receive the holy Sacraments; and that, when she was ill, the coadjutor of James went to her (with the exception of the last time) to hear the confessions of the sick woman. These things clearly follow from common law, and the parish priest affirms that this is also evident from the Diocesan Statutes. Furthermore, he contends that all doubt on this matter vanishes if one considers the custom, which, if it has always been followed by many, gains the greatest strength when it concerns matters pertaining to funerals and burials: *Cap. De certificar de sepult. Reiffens. in Ius Canon. tom. 3. tit. 28 n. 47, Rota Decis. 376 n. 2. part. 1. recent. S. C. in Firmana Iuris funerandi 21 Nov. 1840 § Post, Rom. Emol. f un. 13 Febr. 1841. § Constans et alibi passim.* Moreover, the parish priest argues in his favor, stating that, besides the other cases reported by the parish priest, and resolved in his favor, he said: "In the month of April 1867, Anna Calvi, who was related to the deceased Mary, died in that village, and after the customary rites were performed by the Vicar Capitular, he urged the parish priest of Ripalta to send the offerings to the parish priest of James, who, although he protested, nevertheless followed the advice of the Vicar."

RIGHTS OF THE PARISH PRIEST OF THE VILLAGE. On the other hand, it must be considered that no right seems to belong to the parish priest of James to receive offerings in the case of the funeral, because, since the aforementioned Mary usually resided in the village for a considerable part of the year, together with her family, it must be said that she acquired a domicile there, if not legally, at least parochially, which is certainly contradicted by the long-standing...

[*Latin ed. p. 213*]

Regarding the benefits of burial, 213: The right to reside in a parish, in order to receive the necessary sacraments there, and also to contract marriage and acquire a burial place, is established by the noted authorities of Lessius in *De Iustitia et Iure*, Book 4, Chapter 2, question 7, number 47, where he cites several concurring authors, and Antonellus confirms this in his treatise on ecclesiastical law, Book 2, Chapter 1, question 13, number 215. It is not absurd that someone, while maintaining a domicile elsewhere, may establish a new domicile, thus having a domicile in two places. *Leges Municipales*, 6, 2, and following; *L. Senatores*, 11, and following, concerning Senators; Chapter "Dilectus filius," 2. In the *Rescripts*, Clos, in the word "domicile," Bardellon, Council 38, number 23; Andreol, *Controversiae Forenses*, 139, number 44; Tancredin, *Consultationes Forenses*, 31, number 51; *Rota Decisorum*, 105, number 10, before Roxas. Especially when it is a question of a parochial domicile, which is being considered, it is necessary to determine whether the aforementioned inhabitant intends

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to remain in that parish for a significant portion of the year, in order to be considered a parishioner, as Layman points out in Book 1, Treatise 4, Chapter 12, number 1. Furthermore, the aforementioned Mary has customarily resided within the boundaries of the parish of Ripalta Nuova, and the plaintiff in the case does not deny this. Therefore, since the Lady Mary can receive the sacraments in both parishes, and both pastors are obligated to administer them to her, a priority arises between the pastors, and the right sought remains in favor of the pastor of the parish of Ripalta, who takes precedence, as noted in Summa Angelorum, under the word "Sepultura," number 17; Antonellus, *De Regimine Ecclesiae*, Book 1, Chapter 12, number 15; Marchetti, in *Praxi Vicariaria*, Chapter on Burial, title 28, section 1, numbers 19 and 20, where he states that the church is said to take precedence which first receives the body of the deceased. And previously, under number 12, referring to the method of determining one's own parish, he affirms that, for this purpose, it is better to consider the present state in which one is found residing, rather than another domicile, even if the person residing there does not intend to establish a new domicile. This is also supported by Amostaz, *De Causis Piis*, Chapter 8, number 12; Sperell, *Decisorum*, 87, numbers 5 to 11; *Rota Decisorum*, 45, number 7.

[*Latin ed. p. 214*]

214. Regarding the expenses of a funeral, see *Zarat*, decision 133, number 3, before *Ansaldo*, cited in *Congrin*. See also *Àriminen*. Concerning the law regarding burial and funerals, see § *Vitanda*.

It is indeed the case that servants, soldiers, officials, who, whether for the sake of study, or service, or military duty, or office, transfer themselves from the place where they reside to another, even if they intend to remain there, and repeatedly confirm this intention by returning to their homeland; nevertheless, they ought to be buried in the church of the place of their service, or office, or residence, if they die there: *Federic. de Senis*, council 254, throughout, and especially number 5 in the 14th addition; *Raburell*, in chapter 1, number 5, question 7, *De Sepult.*, states: "If a scholar dies in the place of study, or if someone is present in office and dies there, he is a parishioner in the church in which he dies," and *Barbosa de iure Eccles*, book 2, chapter 10, number 55, *Card. Petra* to *Const. IX Innocentii IV*, number 42, at the end, and number 47, *Rota* before *Ansaldo*, cited, decision 133, number 24, and in the addition, number 25.

Therefore, as it best applies to our case, *Ferraris* in his *Bibl. Can. Univ.*, under the word *Sepultura*, number 25, states: "He who has a winter home, for example, in a city, and a summer home in the countryside, and spends an equal amount of time in one and the other, or resides, or stays, should be buried in the parish in which he dies. And the reason is because it is considered the same as one who has a principal home in two places equally,

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and therefore he is a parishioner of both parishes; therefore, he should be buried in the parish in which he dies, since that is, for that time, truly his parish," citing *Cap. Ex part. 5, Cap. In nostra 10 de Sepultu*, and *Cap. Animarum 1 eod.*, in 6.

And rightly so, because it is not by mere residence alone that someone is made a parishioner of a church, provided that he is not there for the sake of creation, or to perform rural duties, or for some other brief reason, and is about to return immediately to his original parish, as *Federic. De Senis* stated in council 254, cited above, and as the Sacred Congregation has taught repeatedly, with related examples, as *Fagnan* demonstrates in chapter *Significavit De Parochiis*, number 36 and following.

[*Latin ed. p. 215*]

SECTION 21: Concerning the Benefits of Burial.

However, some doubt might still remain, it would seem necessary to respond favorably to the testimony of the Parish Church of Ripalta, where she received the Sacraments during her time of infirmity, as held by Buttier in chapter 1, number 9, and number 4 concerning Burial; Sylvester in the Summa, under the word "Sepultura," number 8; Gratian, Disputations, book 1, chapter 94, number 75; and Marescot, Variations and Resolutions, book 2, chapter 95, number 11. During her time of infirmity, Mary received the Sacraments in the Church of Ripalta, and the Parish Priest, James, does not deny this, and necessity itself demonstrates that it could have been done in this way and no other; moreover, since he himself is the superior of the Parish Priest of Ripalta, it is from him that the family of Mary usually depends while living in that Parish.

Regarding custom, apart from the aforementioned Aversa, it is gathered from the statements of the Ordinary that it is neither constant nor peaceful, but rather inconsistent. Therefore, it is necessary for the entire argument derived from it to be rejected by the opponent. For it is clear that a custom which is neither constant nor peaceful, but rather disputed, and therefore lacking in its principal characteristics, loses all its force.

Therefore, having considered both sides, and applying the wisdom of the Sacred Canons, the following proposition was put forth: Is the case one in which the benefits of burial should be restored?

The Sacred Congregation, after discussion on March 12, 1881, decided: Negatively.

FROM WHICH IT MAY BE GATHERED: 1. That those who are within the bounds of their Parish have the assistance of the Parish Priest in the burials of the deceased, by reason of the spiritual office exercised by the same Parish Priest, while the parishioners are living.

[*Latin ed. p. 216*]

216. CONCERNING THE RIGHTS OF THE PARISH PRIEST IN FUNER-

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ALS: Parishioners are to be called upon, with regard to burial, those who reside within the boundaries of the parish, so that they may receive the sacraments of the living within that parish, and so that the parish priest may administer them.

III. The parochial office, properly speaking, is not seen as being attached to a place, but rather is founded upon the persons of the parishioners; thus, whatever their circumstances, the rights of the parish priest over them remain intact.

IV. And therefore, he who lives in the countryside, or engages in rural occupations, and dies there, is not to be buried in the countryside, but is to be referred to the parish of the city, to whose parish priest the right of burial belongs.

V. And this is what the common law and the Doctors indicate, when parishioners transfer themselves to the countryside for the purpose of farming, or for the sake of service, study, or military duty, without the intention of remaining there and establishing a domicile.

VI. However, the situation is quite different when a parishioner has a double domicile; that is, in the countryside and in the city, so that he spends an equal amount of time, sometimes in one place and sometimes in the other; in this case, he is to be buried in the parish in which he died.

VII. Indeed, in this case, this parishioner is equated with one who has an equally principal domicile in two places; so that he is a parishioner of both parishes, and he must be buried in the parish in which he dies, which, for that reason, is considered his true parish.

VIII. In the case of a double domicile, equally principal, the deceased having received the sacraments in both parishes, both parish priests have the obligation to administer them; therefore, the right sought remains in favor of the parish priest who, anticipating the other parish priest, began the funeral rites for the deceased.

[*Latin ed. p. 217*]

217 FROM THE DECREE of the Holy Congregation of Rites concerning the Cult of the Confirmation, which has been practiced from time immemorial, dedicated to Pope Urban II, the holy and blessed one. In the 11th century, during a time of grievous discord between the Church and the Empire, Urban II, formerly named Odo, displayed no less fortitude than other Popes who held the Roman See during that period. He was born of a noble family near Castellion, not far from the city of Rheims. He devoted himself to philosophical and theological studies under Brunone, who later became the most celebrated teacher of the Carthusian Order. However, having become accustomed to worldly affairs, and having professed the Rule of St. Benedict, he lived very religiously first in the Cluny monastery, and then in the monastery of Cava de' Tirreni. Following in the footsteps of St. Gregory

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VII, a man of great power in word and deed, who had employed him in important Church affairs, he was appointed Bishop of Ostia and Cardinal of the Holy Roman Church. With equal constancy and fortitude of spirit, he defended the rights of the Church against secular power. After abdicating as Supreme Pontiff, he visited the sacred mountain of Cassino, and there, through the merits of St. Benedict, he was miraculously cured of a defect in his leg, from which he had long suffered. He consecrated the church of the Cava de' Tirreni monastery, and the Basilica of St. Nicholas in Bari, and there he solemnly reposed the body of that same thaumaturge. In the same Basilica in Bar, he held a very important Council, in order to refute the errors of the Greeks, using, in particular, the most learned arguments, with which St. Anselm, the Archbishop of Canterbury, defended the Catholic faith. Furthermore, he convened Councils in other places, and with the utmost care, he promoted the observance of ecclesiastical discipline. But the most famous of all was the Council of Clermont, in which he was the driving force behind the sacred expeditions, known as the Crusades, with such success that...

[*Latin ed. p. 218*]

218 A DECREE: The greatest multitude of people responded to his voice, and before his death, the city of Jerusalem was liberated from the Mahometan servitude. Following the most tender devotion to the Virgin Mother of God, he promoted among the faithful the recitation of the Little Office of the Immaculate Conception, and the Angelic Salutation, in the morning and evening. Distinguished by such notable deeds and conspicuous sanctity of life, he was held in great honor, not only during his life, but especially after his glorious death. Many writers, indeed, have included him among the Saints; in several martyrologies, along with the names of other Saints, the name of Urban II is found, and a day is designated for annually commemorating his feast. But most importantly, when peace was restored between the Church and the Empire, Pope Callistus II, in the Lateran Palace, erected a magnificent chapel dedicated to Saint Nicholas of Myra, and he ordered that images of six Roman Pontiffs, his predecessors, who had defended the rights of the Church against the invasions of the Empire, be painted in its apse. Among these images, he wished the image of Urban II to be depicted in such a way that it would resemble only the images of Saints, as was the custom from ancient times in the Church. This painting, which remained until the time of Clement X, was, when the chapel of Saint Nicholas was destroyed due to new circumstances, restored by Benedict XIV, in the sacred chapel of the Penitentiaries, so that the monuments of devotion exhibited to his predecessors for so long would be religiously preserved. Therefore, since Urban II was considered a Saint both in Rome and elsewhere, and his cult has persisted until this time, the Most Reverend Benedict Maria

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Langénieux, the modern Archbishop of Rheims, responding to the fervent desires of the clergy of his Archdiocese, celebrating the birth of this most blessed Pontiff, and also of the entire Benedictine family, which was ennobled by such a distinguished member, as well as of other most eminent men, especially those distinguished by ecclesiastical dignity, undertook to construct a Processional Ordinarily, and finally declared that the public cult of Blessed Urban II had been exhibited from time immemorial, for a hundred years and much longer, before the Decrees of Pope Urban VIII, and that it is still exhibited, and therefore that the cult of Blessed Urban II is among those exempted from the Decrees of Urban VIII. This matter was brought before the examination of the Congregation of Sacred Rites, and in the Ordinary meeting of that same Sacred Congregation, convened on the day indicated at the Vatican, by the Most Reverend and Most Illustrious Cardinal Dominic Bartolini, of the aforementioned Congregation.

[*Latin ed. p. 219*]

DECREE 219 Concerning the Prefect and the Causes of the aforementioned case, regarding the doubt: "Whether the opinion of the Most Reverend Archbishop of Rheims concerning the devotion rendered to the aforementioned Servant of God, or concerning the exception granted by the Decrees of Pope Urban VIII, should be confirmed in the case and for the purpose under consideration?" The Fathers entrusted with safeguarding the sacred rites, having carefully considered all matters, and having heard the voice and written opinion of the Reverend Father Lawrence Salvati, Promoter of the Holy Faith, decided to respond: "Affirmatively, that is, the opinion should be confirmed." July 12, 1881. Subsequently, these matters were reported faithfully to His Holiness Pope Leo XIII by the Most Reverend Augustine Caprara, Assessor of the Congregation of Sacred Rites, and His Holiness approved and confirmed the decree of the aforementioned Congregation on the 14th of the same month and year.

D. CARDINAL BARTOLINIUS, Prefect of the Sacred Rites.

[Space for signature] Placidus Halli, Secretary of the Sacred Rites.

Discussion: "optica."

SYNOPSIS OF THE LIFE OF BLESSED URBAN II.

Near Castellion, above Matrona, in France, a town not far from the city of Rheims, Urban II, formerly called Odo, was born into a noble family. Odo was educated in the Church of Rheims, under the guidance of Brunone, whose fame would later become even more illustrious, as he was the first founder and father of the Order of the Carthusians. Some authors state that Urban was also a Canon of the Church of Rheims. But, having aspired to a more perfect life, and perhaps with the counsel of Brunone, he withdrew to the Cluniac monastery. There, he was clothed in monastic habit

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by Hugues and later appointed Prior by the same. When Gregory VII, by Hugues the Abbot, requested several of his monks, men distinguished by knowledge and virtue, to assist him, Odo was chosen first among others, to be of service to the Pope in those most difficult times. The Pope then created him Bishop of Ostia and Cardinal of the Holy Roman Church. When he set out as a legate to Germany, he especially endeavored to provide bishops for the churches throughout the world, as the necessities of those troubled times demanded. After the deaths of Gregory VII and Victor III, who held the pontifical dignity for a short time, in the year 1088, at Terracina, Odo, Bishop of Ostia, was unanimously elected Pope by all Catholics.

[*Latin ed. p. 220*]

220. URBAN. He was proclaimed Pope under the name of Urban II. To recount all the events of his pontificate, and his prudence and fortitude towards Emperor Henry, and the pseudo-pope Guibert, would be impossible; therefore, we have chosen to mention only a few things, so that his holiness may be immediately apparent. Such was the opinion of Urban among all men, that he was loved by all and considered a true and legitimate Pope, with the exception of Henry, the German prince, and his followers; but even these were so disarmed by his prudence and gentleness of character, that many of them were ashamed to oppose so amiable and so holy a man. The fame of this Pope grew ever brighter, both because of the Council of Piacenza in the year 1095, and other councils convened in various cities, and also because of the many things which this outstanding Pope wrote concerning ecclesiastical matters. However, the Council of Clermont did more to commend his fame to posterity than anything else, namely, that celebrated expedition to the Holy Land, which, thanks to the eloquence of Urban II, was approved and proclaimed with universal acclaim. At the conclusion of this Council, the Pope went out into a large square, and offered up a prayer for the success of this expedition, so that all those present cried out, "God wills it!" To this expedition, the Pope, with the consent of the Council, appointed Adhemar of Puy, the Bishop, as leader, because he was eminently suited for both worldly and spiritual matters, and was most skilled in both. On this occasion, he offered up many prayers, and he instructed the Bishops that, when they returned to their dioceses, they should enjoin their subjects, for the remission of sins, to undertake a pilgrimage to the Holy Land, and to call these pilgrimages by the name of this expedition. From countless writers, it is discovered how much Urban contributed to the promotion and furtherance of this expedition. And, as I omit others, Ordericus Vitalis, in book 8, states that on this occasion, he proclaimed that Urban had been appointed by God as the greatest prince of Israel, against the aliens, to whom he had entrusted the tower of David with its fortifications, against the face of Damascus. Furthermore, it has always been the opinion of all that Urban II deserved the

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highest praise for his work on behalf of the Church; which is also confirmed by an ancient inscription carved in the Vatican Palace: "Urban II, the author of the expedition against the infidels." Thus, he encouraged the expedition so much that he wished to set out with Robert of Normandy and Stephen of Blois, but he was restrained by Catholics who did not wish the Roman Church, so troubled, to be left without a shepherd. In the year 1098, he arrived at Bari, and there...

[*Latin ed. p. 221*]

RHEMEN. 221. He was transferred to the church of Saint Nicholas, and there held a council. The following year, he held another synod in the Basilica of Saint Peter; this synod was convened because of the errors and heresies of the Greeks, and among those present were one hundred and fifty bishops and abbots, and countless clergy. "Finally, after overcoming the labors which he had endured for the Church of God, and after calming the most turbulent affairs, he ascended to the heavens, his merits far outweighing the days he had lived, at the very time that the city of Jerusalem was captured by Christian armies in the East. His body was buried in the Vatican Basilica, and his funeral, as Paschal I, his successor, states, was celebrated with the mourning and sadness of the entire Roman city." Contemporary writers report that after his death, he became renowned for miracles. Abbot Gruibert, among others, states that Urban performed many miracles; he said: "The announcements of Pope Urban after his death were renowned for miracles." Indeed, after his death and burial, as the Bishop of Ostia, who succeeded him, wrote, "many signs will already be occurring." And Paschal II, writing to Abbot Hugh of the Territorial Abbey of Cluny, said: "The doctrine and way of life of our Lord and Father, Pope Urban, which were so pleasing to God, undoubtedly demonstrate a better outcome, and the entire Church testifies to this sadness." Therefore, it is not surprising that the heroic virtues of Blessed Urban, his precious death, and the miracles that followed, engendered a great opinion of his sanctity in the hearts of the faithful. For even while he was alive, he was called a man of outstanding knowledge and religion; and after his death, Paschal II called him the Most Holy Man, his blessed predecessor, and in the Lateran Council, in his profession of faith, he said, "I embrace the decrees of the Holy Fathers and of the Roman Pontiffs, and especially the decrees of my Lord Pope Gregory and of the blessed memory of Pope Urban." The bishops, too, felt the same way about the sanctity of Urban II. These testimonies, as anyone can see, demonstrate the origin of the cult of Blessed Urban II, which constitutes the subject of this inquiry. And Adalferius, a contemporary of Urban, wrote about his sanctity, as if it were the object of worship, in the Acts of Saint Nicholas the Pilgrim: "When the second patriarch of the Holy See, the most glorious Urban, powerful in work and doctrine, and overflowing with eloquence, following in the footsteps of the

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Apostles and apostolic men, and intent on pastoral care, happily governed the churches of the kingdom." It is evident that Adalferius, with the words "most glorious," intended to signify not only Urban's sanctity, but also his cult.

[*Latin ed. p. 222*]

222. REMARKS. The term "blessed" seems to indicate not only singular integrity of life, an object of universal veneration, but also a life already blessed, an object of religious worship. Therefore, Adalferius did not doubt that the sanctity of Urban was worthy of veneration, but he questioned whether ecclesiastical authority had declared him a saint and worthy of worship.

ON THE CULT OF BLESSED URBAN II.

Since Urban II enjoyed great renown for his sanctity among all, due to his outstanding virtues and the remarkable miracles that illuminated his precious death, it is not surprising that contemporary writers, revering this Pope so greatly, adorned him with the titles of "blessed" and "saint," which signify a sign of worship, according to Benedict XIV, *De Servo Dei Beato*, Book 2, Chapter 23, paragraph 1.

Besides other writers of the 11th and 12th centuries, Paschal II gave very weighty testimony, calling Urban, as we have seen, a "most holy man." In the history of the holy war, written by the author, Urban's contemporary, the same Urban is called "the Holy Pope Urban," and "Urban." Presiding over the Council of Claromont, he ordered that the soldiers proceed...

Berard of Casauria, the author of the chronicle, calls Urban absolutely "holy": "At that time, divine mercy provided the Roman Church with a good shepherd, a lover of Christianity and a defender of the faith, the holy Urban."

It is also important to note the testimony of the contemporary man, Domnizon, who, as a priest of this Pope, was an eyewitness to many things. Referring to Urban among the Blessed, he proclaims that he is "deservedly associated with the saints."

Callixtus II, the Supreme Pontiff, who ascended to the Chair of Peter only twenty years after Urban's death, having carefully considered the sanctity of his predecessor, ordered that Urban II, adorned with the attributes of sanctity, be depicted along with other Roman Pontiffs in the apse of the chapel of St. Nicholas in the Lateran Basilica. Among the outstanding Pontiffs depicted in that chapel for their sanctity was Blessed Urban II, wearing pontifical vestments, blessing the people, with a mitre on his head and an orbicular diadem (1) around his head, and with his name and the title of "saint" beside him.

Therefore, it seems justified to say that the praised opinion of Domnizon

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regarding the cult of Blessed Urban was indeed enshrined in the monuments of Christian art. For Callixtus II predicted (1) The orbicular diadem is called a "sign" by Benedict XIV, *De Serv. Sanctitatis et Cultus Ecclesiastici ad Deum Beati*, Book 1, Chapter 41, paragraph 20.

[*Latin ed. p. 223*]

RHEMEN. 223. He ordered a small chapel to be built for the special use of the Holy Pontiff, and within it, among the images of the blessed Virgin Mary and the saints, were also images of Popes, such as that of Urban II, adorned with attributes of sanctity and the title of "saint." It necessarily follows that these Popes were also honored by those celebrating in that chapel, and that this honor was offered to them. And this honor was offered to these Popes from the successors of Callixtus II up to Anastasius IV; who in the year 1153 ordered the restoration of the Lateran mosaic. Here, as if to validate the judgment of his predecessor Callixtus, he also wished to have another image painted on the other side, depicting himself praying at the feet of the blessed Virgin. This action of Anastasius IV, as we have shown, provides another argument for the cult; and the fact that he himself preserved the same images, adorned with attributes of sanctity and the title of "saint" in that oratory. After Anastasius IV, for two hundred continuous years, this practice of honoring them was considered customary by all his successors who celebrated the sacred rites in that oratory. Many learned men have written about this oratory; and in it, this mosaic, along with the images of the Popes, as it had been restored by Anastasius IV, remained until the 18th century. The authority of this monument, in establishing the cult of Urban II, is demonstrated in Benedict XIV, *lib. 2, cap. 20, n. 8*, and *lib. 1, cap. 41, n. 20, 21, and 22*. In these passages, the same Pontiff, describing the ancient Lateran mosaic, states: "...on the right side, there were images of the highest Pontiffs, that is, of Saint Urban II..." He also observed that neither the simple designation of "saint," nor the image depicted in a sacred place, is sufficient for someone to be reckoned among the canonized, unless the Supreme Pontiff is aware and approves, and unless the cult has been extended to the entire Church, or a definitive judgment has been pronounced by him regarding the sanctity and the cult to be rendered throughout the Church. Regarding Urban II, in *lib. 1, cap. 41, n. 32*, he states: "...neither Callixtus II nor Anastasius IV would have placed the images depicted in that manner and adorned with that title in the chapel, unless they had intended that their successors, especially those who for two hundred continuous years celebrated the sacred rites in the same chapel and altar, would have preserved those very images there, unless they had intended to grant and permit the cult in their honor, which was exhibited through those very images." To the authority of this Pontiff, another argument regarding the cult of Urban II is added, and it is derived from a manuscript book, currently in... (1) Lest it be thought that

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the symbol of sanctity and cult had been placed there solely at the whim of men, Callixtus II ordered himself to be painted at the feet of the blessed Virgin.

[*Latin ed. p. 224*]

224 RHEIMS. The royal library of Brussels preserves it. It contains a calendar of saints, to whom veneration was offered in the monastery of Cava de' Tirreni; and in this calendar, among others, is the entry "On July 29th of the same year, Urban II, the most holy Pope." Furthermore, in many martyrologies, the name and praises of Urban are commemorated; and numerous historians of the 14th, 15th, and 16th centuries attest to the sanctity of Urban II. Since the veneration of Urban II had already reached a point by the time that the Constitution of Urban VIII was issued, it is evident that this veneration was included within the scope of the Pope's declaration, namely, that it did not intend to apply to those who are venerated by the Apostolic See or Ordinary, either for a long period of time, or through knowledge and tolerance (1). Indeed, the veneration of Urban flourished at the very time when, according to the decrees of that Pope, it should have ceased. And in truth, images of Urban II, bearing the attributes of sanctity, appeared at this time, and the blessed title was attributed to him in several works, with the knowledge and tolerance of the Ordinaries, and published by the printers. In an ancient Benedictine breviary, preserved in the Archiepiscopal library of Rheims, whose title no longer exists, Urban is adorned with the blessed title in the octave reading of the Office of Saint Peter, the Bishop, and of Policastro, and the third Abbot of Cava de' Tirreni. Many learned men of the 17th century who wrote about Urban never omitted the name of the saint. Thus, as others have noted, Abbot Lucenti in his work *Italia Sacra* in 1704 said: "Nor is it our concern to exaggerate anything about the ancient veneration of the aforementioned Popes, among whom is Urban II, since it is known from the most reliable authors." To demonstrate that the veneration, and indeed the venerable veneration, of Urban II existed, even Gallican writers of the 18th century spoke of the sanctity of Urban. And to all these monuments and writers, the authority of Benedict XIV adds weight, who, speaking of blessed Urban II in his work *De serv. Dei beati*, book 1, chapter 4, number 25, said: "We do not think it necessary to recount here his glorious deeds, but only to indicate that his name is inscribed with the blessed title in some martyrologies and sacred calendars..." (1) Before the decrees of Urban VIII, the See tolerated the public cult of some Servants of God, even if not beatified or canonized, because, as Benedict XIV said: "It was antiquity that fought for them, and the knowledge and tolerance of the Ordinaries intervened, or when they had been introduced... from a public and constant reputation for sanctity or the performance of miracles;

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book II, chapter 9, number 6."

[*Latin ed. p. 225*]

RHEIMS. 225 After Benedict XIV, there are other authors who offer testimony regarding the veneration of the blessed Urban; and in the Cathedral Church of Terracina, where he was elected and venerated, there remains to this day an image, beneath which is read "B. Urbanus II." In the Church of Saint Mary the Greater of Cava de' Tirreni, the name of the blessed Urban is given to children at baptism, according to the traditional piety of the faithful. And in Castellione, near Matrona, where Urban II was born, his memory still survives vividly to this day, and he is commonly called "Sanctus" by the inhabitants. In the year 1866, Cardinal Gousset, having received from the Comte de Verdonnet the donation of the priory of Binson, of which the blessed Urban was Prior, donated it to the Archbishopric of Rheims. In the year 1875, a solemn feast was celebrated in Castellione in honor of the blessed Urban II. Therefore, it seems fitting to say that the blessed Urban has possessed a very ancient veneration, both before the era of Urban, during it, and up to us now.

OBSERVATIONS OF THE PROMOTER OF THE FAITH. The undersigned, with all due respect, desires that the outcome of these labors and the endeavors of outstanding men may be favorable; but I cannot conceal the serious difficulties that seem to contradict these pious hopes. And first, with regard to the form of the proceedings, it must be noted that several things occurred in this process that do not fully conform to the prescriptions of common law. Thus, it is doubtful who was appointed Notary in the Actuary of this process. Furthermore, several persons simultaneously performed duties in this judgment. But this union or conversion of offices in the same person is entirely prohibited by a decree issued in the year 1870, with a clause that renders it invalid: therefore, the acts themselves are subject to nullity. But let us proceed to the proofs of the cult, the most important of which is that famous painting by which Callistus II decorated the facade of the Church of Saint Nicholas of Mirens. However, it must first be kept in mind that Panvinio was the first to write about this painting in 1562; for until that author, no graphic or historical memory of this very painting can be found. Moreover, Panvinio in his work, "De Basilica, Baptisterio, et Patriarchio Lateranensi," does not attribute any mark of sanctity to the Popes depicted in the facade, nor does he relate that it had been attributed by others. It is also worth noting that Saint Gregory VII is also lacking a halo and the praise of a saint in that painting; for it is not new to find ancient images of the highest Pontiffs without these signs of sanctity, even though a public ecclesiastical cult was later bestowed upon them. Thus, in the series depicted formerly in the Basilica of Ostia, the Acts, Volume XIV, page 10, were not distinguished

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by a halo or a title of sanctity.

[*Latin ed. p. 226*]

226. Regarding the images of Urban V and Eugene III, whose veneration, though ancient, was recognized by the Apostolic See only a few years ago. And although it is said that a halo was placed above these six Popes in a painting in the Lateran Palace, this would not be conclusive. For it is evident in mosaic works, both in the basilicas of Rome and those still existing in Ravenna, that not only Roman Pontiffs, but also Emperors, and their wives, appear with such a halo, although neither celebrated for their sanctity nor for ecclesiastical veneration. Furthermore, since it is not known from Panvinio whether the aforementioned images of the Holy Pontiffs were adorned with symbols of sanctity, it cannot be inferred that the simple placement of these images in the apse of a sanctuary necessarily implies that the Apostolic See has granted these Pontiffs true and proper ecclesiastical veneration. For anyone familiar with Christian iconography knows that Roman Pontiffs have often been depicted in the apses of basilicas, not for the sake of veneration, but for other reasons as well, sometimes depicted kneeling and with a square halo, but also standing and holding a book, just as those six Pontiffs were depicted in the chapel of St. Nicholas. It is sufficient to consult Ciampini's work, "Antiquities of Xanten," chapter 14, page 105, concerning the church of St. Agnes outside the walls, which is illustrated with mosaics. In the year 623, to the right of the aforementioned virgin (Agnes), stands Pope Honorius, who restored the church... therefore, a copy of that image is preserved. To the left, another Pope... who is holding something in his hand; therefore, I judge that this image depicts Symmachus, the Supreme Pontiff, predecessor of Honorius, and also restorer of the same church. We refrain from mentioning other monuments, since it is clear that Holy Pontiffs, even after their death, have often been depicted standing in the apse, and either without a halo or with a halo, for a reason entirely different from true and proper veneration, namely, out of gratitude and remembrance. Therefore, why should it not have been permissible for Callixtus II in the Lateran Basilica to do the same, in memory of the sufferings endured by those Supreme Pontiffs in the fierce struggle between the papacy and the empire? Panvinio states that this was Callixtus' intention, and his authority is not diminished by Severanus, nor by Cardinal Rasponio; since these two authors did not see the painting as they describe it, but rather described it based on Panvinio; for at that time, the appearance of the painting had changed. And therefore, these authors, following Panvinio, could only assert that Callixtus II included Urban II among the Pontiffs. This change in the painting occurred as fol-

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lows: namely, when St. Pius V in the year 1570...

[*Latin ed. p. 227*]

RHEMEN. 227. If the College of Penitentiaries had conceded the chapel of Saint Nicholas, they would have repainted the sacred images, and indeed, in such a way that they would have pleased Urban II and Saint Celestine. Therefore, Panvinio is not to be blamed when he asserts that in his time the image of Urban II existed in the apse of the Lateran Palace, but it should not be thought, because of the authority of Severanus and Rasponii, that Callixtus II had placed circular diadems and the praise of the saint upon him and others. For we have said that these two authors wrote in accordance with the authority of Panvinio. Therefore, the painting in the Lateran Palace, having been changed once, remained for a very long time, and it still existed in the year 1638. However, when Caietanus saw that the titles of the sanctity of two or three Popes had been changed, he made these from a sheet of copper, which he had specially engraved, and restored them to their original integrity. By this method of acting, Caietanus criticized Erasmus G-attula, who in his history of the Abbey of Monte Cassino, says: "He could restore the names of the Popes." Caietanus, however, from Panvinio, did not restore the title of sanctity, of which he himself does not even remember. Hence, from these continuous changes in the same painting, it can be gathered how weak are the arguments for the unchangeable veneration derived from it. For, first of all, it is not certain that the images were placed in the apse by Callixtus II or Anastasius IV in order to be venerated, or that they were depicted with ornaments and symbols of sanctity, nor that the following Popes venerated the same images. As for the hundred-year period, during which the state of the painting was changed not once, but twice or three times, and the name of Urban II was erased, and only restored almost in the year 1718. Therefore, the evidence from that time is lacking, which, according to the decrees of Urban VIII, should be especially considered. It is regrettable that, with so much change and alteration, no copy or image of this painting has survived or been found, which was made at the time when it had not yet undergone any alteration. In the absence of these, it cannot be safely known whether those images were truly adorned with a halo and the praise of the saint, as some writers, relying only on conjectures, say. In the absence of these, Caietanus presents only the example of an engraving in copper from the year 1636, when the painting had already been changed many times. What, then, should be said about another copy of the same painting, which Benedict XIV included in his work? The Pope himself states that this copy was made with the help of chalcographers and antiquarians, who copied it several times before it was destroyed. Therefore, unless you say that these chalcographers lived from the time of Panvinio, they copied the painting as they saw it after the year

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1698.

[*Latin ed. p. 228*]

228. Regarding this matter, it is indeed an epoch in which, as they believed, the former state was restored. Therefore, the Pope himself, in the third edition of his work in the year 1747, noted that the painting he mentioned did not entirely correspond to the ancient form. For this reason, he writes there that it is useful to describe the painting more carefully, which seemed even more necessary because "the painting, as antiquity shows, is not expressed exactly in every detail." It is not to be concealed that Lambertini, when he published his first work on canonization, believed that from that painting in the Lateran Palace, it could be gathered that an unmemorable cult had been granted to those highest of Pontiffs in a particular place; however, he confesses that he followed the authority of Cajetan and wrote the same. And although, after being elevated to the Supreme Pontificate, he restored the images of those Popes, he declared plainly that he did so only "so that the memory of the ancient sacred images would not perish." Nor was he content with this declaration; moved by the difficulty of the matter, in the aforementioned third edition of his work, he tempered his judgment so much that he considered the description from Grimaldi to be the true one, in which the names of Gelasius, Paschal, and Urban II do not appear. Furthermore, it should not be omitted that in the year 1718, Crescenzio was unable to obtain confirmation of the cult for Gelasius I, relying on the same argument, namely, the painting in the Lateran Palace. And indeed, if Callixtus II or Benedict XIV had, through that addition and restoration of the painting, intended to grant public ecclesiastical cult to a particular place, it could not have happened that its extension, at least by the Roman clergy, had never been sought or obtained over so many centuries, as we know to be the case for Gregory X, Benedict XI, Urban V, and Eugene III; would it not have been evident that ecclesiastical cult was exhibited to those Popes in a particular place? Since matters pertaining to the painting in the Lateran Palace are thus, I could entirely refrain from examining other ecclesiastical documents, says the Promoter of the Faith. For those who promote the confirmation of cult do not conceal that this monument, indeed, almost the only one, serves as the basis for proving the cult. Likewise, it is not necessary to consider other monuments mentioned in the aforementioned judicial sentence. As for the praises of writers, in which Urban II is called a most blessed or most virtuous man of holy memory: it should be remembered that these are not suitable for proving public cult towards the Popes, since for recently deceased Roman Pontiffs, those appellations and signs of veneration are commonly used by the people

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indiscriminately. Felicia, indeed...

[*Latin ed. p. 229*]

CHAPTER 229. Concerning times of faith, in which the people were convinced of this, as is read in the Third Roman Synod, that "the Roman Pontiff, if canonically ordained, is undoubtedly made a saint by the merits of Saint Peter, as testified by Saint Ennodius, Bishop of Pavia, and by many most holy Fathers, as is contained in the Decrees of Saint Symmachus." All these things, while they greatly illustrate the pontifical dignity and the faith of the citizens of Rome, nevertheless diminish the importance attributed to the sanctity and cult of each individual Pope. Furthermore, the most esteemed writers, among whom is Baronius, do not call Urban a saint or a blessed. As for the images of Urban II, it must first be noted that they were not recognized by a judicial process and belong to a more recent epoch. The most skilled art historians attribute the Terracina painting to the 17th or early 18th century. Furthermore, the Bishop of Terracina testifies that no special cult was observed there for Urban II. Three images preserved in the Archiebasilica of Monte Cassino belong to a certain period; and, according to experts, the first was completed in 1677, the second in 1706, and the third in 1700. The bronze images of Urban, or those made of bronze, do not at all belong to the time of Urban VIII, nor are they relevant to the matter itself. For, as Pignatelli observes in *Consult. 24A*, "the judgment of public ecclesiastical cult can only be derived from those images that are found painted in public places." Therefore, the Promoter of the Faith concluded, neither prescription nor legitimately proven possession can be claimed. Regarding the cult observed, it is noted that at Castellione, up to this time, no public cult was offered to him (Urban II), as the very advocate himself unwillingly admitted. But, taking advantage of the opportunity when the Priorate of Binson was restored, a public cult of Urban II was immediately instituted; and in 1877, the blessing of a statue of the same Pope took place in the church of Binson. These most recent signs of cult are far from sufficient to support the cause.

RESPONSE TO THE PROMOTER OF THE FAITH'S OBSERVATIONS.

After refuting the censor's objections regarding the form of the process, the advocate turned to the proofs of the cult.

"As I have said," he stated, "this Supreme Pontiff possessed a reputation for sanctity due to his heroic virtues and his outstanding deeds. I have presented testimonies from his own time concerning his precious death, and I have indicated the great throng of the people who gathered at his tomb, for the sake of devotion, in the Basilica of the Vatican. I have also shown miracles that were worked through the intercession of the same

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Blessed Urban."

[*Latin ed. p. 230*]

230. Concerning him, the most esteemed men of his time bore witness to his virtue. Therefore, it is not surprising that the extraordinary virtues of Urban, his precious death, which was also revealed, and the miracles that followed through his intercession, engendered the greatest opinion of sanctity in the hearts of the faithful. From such a noble origin, the veneration for Urban II began, especially within the Benedictine Order. It is known from ancient documents that an altar was constructed from time immemorial in the place where it is said that blessed Urban sat upon a stone, when he came in the year 1092 to consecrate the Basilica Cathedral of the Most Holy Trinity in Cava. It is also known that many monks have been accustomed, on the day of their monastic profession, to take the name Urban I, in veneration of the same Pope. His successor in the pontificate, Paschal II, wrote about the sanctity of Urban: "The doctrine and life of Pope Urban were so holy and pleasing to God, that the outcome certainly approves of him, and the entire Church testifies to its sadness." Not only within the Benedictine Order, but also in Rome, Urban II enjoyed ecclesiastical veneration. Indeed, Callixtus II, around the year 1124, in the celebrated buildings of the Lateran Palace, ordered that Urban II and five other immediate predecessors of his, who had fought for the rights of the Church against Emperor Henry, be painted in his apse. Benedict XIV, book 1, chapter 41, states that these Popes were held in high esteem for their outstanding virtues and supernatural signs. It was a custom, as is also mentioned in the continuation of the Liber Pontificalis of the 11th and 12th centuries, that writers followed certain formulas when describing the deaths of the Popes. And it is known that the title of "Confessor" was bestowed only upon the most distinguished Popes, who enjoyed public and ecclesiastical veneration in the Roman Curia. But Peter of Pisa wrote about Urban II: "He, the confessor of Christ and a good athlete of Christ, surrendered his soul to God, near St. Nicholas in prison..." The addition "good athlete of Christ" was taken by the writer from the very ancient pontifical book in the life of Pope Nicholas I. These formulas used by the writers were employed with special discernment; therefore, in the life of Callixtus II, although he was a most celebrated Pope, it was written that "he fell asleep in the Lord, having died in peace." Concerning Innocent II, it is written "he died." Furthermore, the author of the life of Urban II was Peter of Pisa, who was raised to the dignity of cardinal by Paschal II; who knew well how much authority the title of "Confessor" held, with the addition of "good athlete of Christ."

[*Latin ed. p. 231*]

RHEMEN. 231 athletes. This testimony of Peter Pisani, however, is considered authentic; for the biographies of the predecessors of Paschal II,

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written in the pontifical book, were said to have been drawn up not only by order, but under the inspiration of the aforementioned Pope. This Pope, Paschal II, gave significant testimony concerning the precious death of Urban II, and concerning his glorious tomb, illuminated by miracles. Having presented these historical facts concerning the opinion of sanctity, the advocate returned to the monument of this cult, constructed by Callixtus II in the Lateran Basilica. The Promoter of the Faith could not deny that this occurred, said the defender, but he pointed out that Panvinio, who was the first to speak of this Lateran painting, did not attribute any mark of sanctity to those Popes. Indeed, Panvinio was silent; but his silence cannot be taken as a positive argument. For Panvinio made a summary description of that painting; so that he did not utter a single word about the upper part of the painting, and he also omitted the oldest inscription, which was read in his time. Does he claim that it did not exist? By no means: for he himself brought it to light not long afterwards, and judged it to be very ancient. Therefore, it is not surprising that Panvinio omitted that detail of the orbicular halo, which, on the other hand, was mentioned by Grimaldus, although at that time some of the names of the Popes had been changed, erased due to antiquity, but not at all their images. The Popes in the apse of the sanctuary are depicted, according to Panvinio, as Alexander II, Gregory VII, Victor III, Urban II, Paschal II, Gelasius II. Callixtus II added to these images the images of the saints Leo the Great and Gregory the Great. In the vault of the apse was the image of the Virgin Mary with the Child, two angels, St. Sylvester, Pope, and St. Anastasius, Pope. Even if, hypothetically, those six earlier Popes mentioned did not have the orbicular halo, and the title of saint, nevertheless, it is a sign of this cult that, as Benedict XIV stated, the images of the same were placed among the images of other saints by Pope Callixtus II. For, by the act of the Supreme Pontiff, those images were placed among the images of other saints, so that they might obtain veneration. But the examples brought forward by the Promoter of the Faith, which he took from the work of Ciampini, concerning images of Popes with orbicular halos in the apses of the churches of St. Venantius, St. Agnes, and St. Lawrence, are false, as demonstrated in the dissertation of the Knight Giovanni Battista De Rossi, written for this purpose. For in the apses of churches, Popes, kings, and other men, who are not saints, were never depicted with the attributes of sanctity. As for the ignorance of the Penitentiaries, as was said elsewhere,

[*Latin ed. p. 232*]

232. If the name of someone has been changed among six Popes, it matters little, provided that the upper part of the images remains intact. It is known that the names of six Popes were inscribed beneath their respective images, which, though damaged by the passage of time from the knees downwards, remained intact in the upper part. However, it

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should be noted that if those unskilled in sacred archaeology, ignorant of who those Popes were, have added the names of other Popes, even of saints, it is understandable. And why is this? Because the upper part of their images, which remained intact, bore the signs of sanctity, namely, the circular diadem. Thus, in place of the name of Urban II, they placed the name of St. Celestine, Pope, because, being ignorant of who that depicted Pope was, they added the name of another saint, since that image appeared adorned with the attributes of sanctity. Grimaldius himself, cited by the promoter of the cause, describing, shortly after Panvinio, those images of the Popes, although with three names changed, spoke very clearly about the circular diadem around the head of each. To this is added the testimony of John Severani in 1638 and of Cardinal Rasponi, who, describing the Lateran mosaic, identified the genuine images of the Popes that Panvinio had mentioned. Nor should we overlook the testimony of Caietani in 1638, Papebrochii in 1685, Lucenti in 1704, Muratori in 1723, and Gattula in 1733. For these, having published the Lateran mosaic in bronze, with the same images of the Popes described by Panvinio, and adorned with the attributes of sanctity, expressly declared that they were aware of the change that had been made, but wished to protest against the unskilled hands that had altered the venerable antiquity. Little needs to be said about another alteration to the Lateran mosaic, since there, too, the names of other saints have been added, without the upper part of the images being changed in any way. But this change was brief; for before the year 1718, with the knowledge and approval of Clement XI, the names were restored. Nor is there a third alteration, since it has already been proven that, since the year 1561, Panvinio read the name of Urban II in the Lateran mosaic. In the reproduction of the Lateran mosaic that he appended to his work, Benedict XIV affirmed that that Pope was Urban II, as he was depicted with the attributes of sanctity, having received ecclesiastical honors (LÍO 1: cap. 41, n. 32). The restoration of the Lateran Basilica, as is read in the inscription related in the third edition of the work of Benedict XIV, was not undertaken so that the memory of the ancient sacred images would perish, but also so that the monuments of the ancient worship, long exhibited to their predecessors, would be religiously preserved. Likewise, the same Pope, as he states in...

[*Latin ed. p. 233*]

RHEMEN. 233 In the third edition of his work, he noted that the painting, which he had previously mentioned, did not entirely correspond to the ancient accounts; he did not speak in such a way as to imply that something essential had been added or removed from it; but rather, he spoke of the representation of the figures being more or less similar to each other. Therefore, he did not raise any questions about the symbols of sanctity, because Grimaldi (whom he follows, Benedict XIV) describing the painting after

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Panvinio, affirmed that the images of the Popes were adorned with a circlet and the title of "Saint." Nor did Benedict XIV consider Grimaldi's description, in which the names of Gelasius, Paschal, and Urban II do not appear, to be authentic; but he considered the same description to be authentic, to the extent that he faithfully described the various arrangements of people and ornaments. Therefore, in his third edition, he preserved the original text entirely; and he never considered the names of those Popes, which Grimaldi described, to be authentic, when it was already known that they had been changed due to the ignorance of the Penitentiaries. Otherwise, Benedict XIV would have had to retract what he had written and even reform the painting. The reason why Crescimbeni, adhering to the same painting in the Lateran Palace, did not obtain confirmation of the cult of Gelasius I, is because the petition was never presented. Not because, as Benedict XIV says in book 1, chapter 41, paragraph 30, it was feared that it would have an unhappy outcome, but for other reasons entirely, quite different.... The Roman clergy, says the Advocate, did not obtain the extension of the cult of Urban II, because it is established in practice that, without a request, the Congregation of Rites does not grant confirmation of a cult; but it will be done what has not yet been done. Even Abbot Tosti, speaking of the origin of the cult dedicated to Urban II, while he makes much of the painting in the Lateran Palace, nevertheless, from the beginning of his investigation, found the true origin of the cult for that Pope in his heroic virtues, deeds, precious death, and miracles, which followed. Speaking of written monuments by which he could prove the first origin of the cult, he clearly intended to refer to that pontifical document by which Urban was associated with the saints; which, according to his opinion, is either lost or still hidden in some archive. Regarding other written monuments, he could not understand anything, although many exist. The Advocate laments that the Promotor Fidei overlooked several authors who absolutely adorned Urban II with the title of "Saint and Blessed," the first among whom was Domizo, a priest of that Pope. Among the authors of the 12th century, Bernard of Clairvaux, the author of a chronicle...

[*Latin ed. p. 234*]

234. RHEMEN. Urban is absolutely called a saint by Urban himself. In the 15th century, he is called a saint by Philip of Bergamo; also, a saint is mentioned in the chronicle of the world by Lebald Schreyer. In the 16th century, in the work of John Stelle, a Venetian priest, Urban is called a saint. Such eulogies indicate documents pertaining to the cult, according to Benedict XIV. During the Urbanian era, other writers also, with the knowledge and tolerance of the Ordinaries, absolutely attributed the title of saint to him in their works, and these were widely published. Furthermore, what we have presented so far is not sufficient; however, proof of the cult of Blessed Urban II certainly existed during the era of Urban VIII. Indeed,

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this most noble cause provides more serious documents, both from before and during that time. Before the centenary, in the year 1527, there is a calendar of the Order of St. Benedict, in which it is written: "On July 29, the feast of St. Urban, Pope II." Therefore, Urban II was venerated as a saint before the Urbanian era, and his name was inscribed with the title of saint in the calendar. This is the significance of this document, that even the Promoter of the Faith considered it entirely appropriate to remain silent. In the catalog of saints of the Monastery of Cava de' Tirreni, compiled by Abbot Alexander Rudolph in the year 1582, the name of Urban II is also found; nor is there any evidence of the cessation of these feasts. In the year 1616, a larger temple began to be built in Cava, where a small chapel had been constructed from time immemorial. Therefore, it seems absurd to say that the feast, which was previously celebrated in the Monastery of Cava, was abolished. It must be admitted that, either through the perversity of times, or through the negligence of the Abbot, those feasts sometimes ceased, which were noted in the ancient calendar of Cava; but this occurred at the end of the 18th century. To demonstrate the Urbanian era, we note that in the year 1595, his name and praises are mentioned in the Martyrology of Arnold Vion, and in another edition published in the year 1629. Furthermore, during this era, images were painted with the attributes of sanctity, and statues were sculpted. Finally, the speaker concluded that Urban II was in possession of the cult, according to the decree of Urban VIII. For before this decree, the Holy See tolerated the public cult being celebrated for some servants of God, although not beatified or canonized, because, as Benedict XIV says, book 2, chapter 9, paragraph 6, "antiquity, knowledge, and the patience of the Ordinaries intervened, or when they had been introduced... from a public and constant reputation of sanctity or miracles." Therefore, for these reasons, the tolerance of the cult of Blessed Urban II is to be restored. Urban VIII, when he forbade the public cult for those who were not beatified or canonized, made an exception for those who, either through the common Church...

[*Latin ed. p. 235*]

RHEMEN. 235. This devotion, whether through the writings of the Saints, or through the unmemorable course of time, or through the knowledge and tolerance of the Apostolic See, had been cultivated. But the devotion to Blessed Urban II was not only not prohibited at this time, but flourished greatly. And therefore, it is clear that this kind of devotion was entirely included in the declaration of the aforementioned Urban VIII, in which it is stated: "He does not wish to prejudice, nor does he intend to prejudice, those who are venerated through the unmemorable course of time, through the knowledge and tolerance of the Apostolic See or of the Ordinary."

DECRETUM Spole tana- Canonizationis Beatae Clarae a Cruce de Mon-

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tefalco Monialis Ordinis Eremitarum Sancti Augustini SUPER DUBIO a An, and concerning which miracles demonstrate in the case and for the effect of which it is spoken: "Blessed Clara a Cruce, from Falcoduno, a nun of the Order of the Hermits of Saint Augustine, having accumulated all virtues, peacefully departed this life on the sixteenth day before the Kalends of September in the year of the restoration of health, 1308, at the approximate age of forty. As her name foretells, from the very dawn of reason, she was strongly captivated by the love of the Cross, and she meditated daily on the Passion of Christ with an intent and more fervent affection of spirit; therefore, God endowed her with heavenly graces in life, and after death, He illustrated her with many miracles. Immediately after her death, the faithful began to venerate Blessed Clara, and the Bishop of Spoleto considered it his duty to inquire into her life and virtues. Meanwhile, many Church prelates, municipalities, and peoples, urged by insistent requests, implored the Supreme Pontiff John XXII to solemnly declare the excellence of the sanctity of the Blessed Nun. The Supreme Pontiff, gladly favoring this clamor of votes, according to the discipline of that time, first...

[*Latin ed. p. 236*]

236 The Apostolic See ordered that an investigation into the life, virtues, and miracles of the blessed Clara be instituted, once and again, and then requested that three Cardinals of the Roman Church, and most learned men, examine the matter. Therefore, almost eighteen years after the death of the blessed one, a report of the apostolic investigation, meticulously prepared by the Cardinals in Rome, was completed, from which it became abundantly clear that the Servant of God had excelled in the practice of Christian perfection, and that her sanctity was confirmed by abundant and constant miracles from God. This report, as trustworthy historians testify, was read in the Consistory before John XXII, and the Supreme Pontiff was inclined to include the blessed Clara among the other saints whom he had already raised to the altar, were it not that the peace of the Church was then gravely disturbed by a schism. However, with the passage of time, due to the public reputation for holiness with which the blessed Clara was celebrated, confirmed by the testimony of extraordinary miracles, the Apostolic See not only approved and encouraged her cult, but also decreed that her name be inscribed in the Martyrology, along with a note of the wonderful signs of the Lord's Passion, which still remained in her heart. Finally, in our own time, when the matter of the resumption of the cause of the blessed Clara was being considered, the Most Holy Pope Pius IX, on the Kalends of September in the year 1855, confirmed the vote of the Sacred Congregation of Rites, decreeing: "So that it may be established that the virtues of Saint Clara are such that it may proceed to further steps, namely, to her canonization, only two miracles, duly proven according to the established procedure, are required." Therefore, with this careful ap-

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proval of her virtues, and also with the immense reputation for holiness, and the perennial splendor of miracles, which have long been admired in the heart of the blessed Clara, the Most Holy Lord Pope Leo XIII deemed it fitting, according to more recent precedents, to proceed to her canonization, so that the truth of the miracles might be established, from those which had already been presented for that very purpose to the Consistory by the Apostolic Inquisition. And thus, the investigation, begun under such auspicious circumstances before John XXII, would receive its final judgment, and the blessed Clara could finally be enrolled among the Saints, among the Virgins, of whom the Church boasts. Especially because the excellence of her virtues and the preeminence of her life sufficiently demonstrated the fervent and constant love for the Cross and the Passion of Jesus Christ. Indeed, having contemplated the mysteries of human redemption with such an attentive and compassionate spirit, she was deemed worthy by God, through a completely new miracle, that the forms of the instruments of the Lord's Passion, which had long been imprinted in her mind, and engraved in her heart, should appear.

[*Latin ed. p. 237*]

DECREE 237: The memory of the Passion of Christ is wonderfully impressed upon the minds of those who contemplate its visible testimony and the long duration of miracles. Therefore, it is fitting to hope that, in this our age, in which the love of the Cross languishes greatly in Christian society, and in which there are many enemies of the Cross of Christ, as the Apostle lamented, whose God is their belly and whose glory is in their shame, it has divinely pleased that this Virgin, most devoted to the Cross and the Passion of the Lord, be raised to the highest honors, so that, through her example and intercession, the love and devotion to the Cross may be revived both in the hearts of Christians and in their morals and habits of life.

Indeed, Our Most Holy Lord, considering all these things, on the sixth day before the Kalends of May of the current year, entrusted the examination and judgment of the miracles, which were reported in the aforementioned Apostolic Inquiry, to the Sacred Congregation of Rites. Meanwhile, as it were, under her patronage, authentic documents relating to the virtues and miracles of the Handmaid of God were unexpectedly discovered, from which the Cardinals Relatores had previously enumerated thirty-five in their report, along with their details. Therefore, in the private Congregation held this year in the Vatican on the eleventh day before the Kalends of August, in accordance with the aforementioned Decree, the Most Reverend Cardinal Thomas Maria Martinelli, Relator of the Cause, proposed the following question: "Concerning which miracles does the case and the effect under consideration consist?" And the Sacred Congregation, from the thirty-five miracles presented in this Cause to the Supreme Pontiff John XXII, discussed and carefully considered six, which were deemed the most

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important, and expressed its affirmative opinion on each of them. Which, on August 11th, was faithfully reported to me, the undersigned Secretary, and was gladly accepted by Our Most Holy Lord. However, before confirming such a vote in this important matter, he ordered that divine grace be invoked. Therefore, inspired by God, His Holiness designated the following day, the fourth Sunday after Pentecost, to pronounce the decretal sentence. Wherefore, having first offered the salutary Host in the private chapel, he entered the most noble hall of the Vatican Palace, and, seated on the throne, summoned the Most Reverend Cardinal Camillus Di Pietro, Bishop of Ostia and Velletri, Dean of the Sacred College, in place of the Most Reverend Cardinal Dominic Bartolini, Prefect of the Sacred Congregation of Rites, who was presently absent in Rome, and the Most Reverend Cardinal Thomas Maria Martinelli, Relator of the Cause, together with the Reverend Father Lawrence Salvati, Promoter of the Faith, and...

[*Latin ed. p. 238*]

238 The aforementioned Decree, confirming the judgment of the aforementioned Congregation, was solemnly pronounced by Me, with the aforementioned present: Concerning six miracles, namely: I. Concerning the wondrous signs of the mysteries of the Passion of Our Lord Jesus Christ, found in the heart of the Blessed Clara, of the first kind; and also concerning the instantaneous and perfect healing: VI. Of a young man, Speranza, afflicted from birth with a monstrous deformity of the feet; VII. Of a young man, Anthony of Rome, afflicted with a chronic and shameful limp, with retraction of the left leg, ankylosis, and other serious symptoms; XV. Of Flora, the wife of Nicholas, suffering from a complete and chronic prolapse of the uterus; XIX. Of the boy Lucarelli Iacometti, suffering from cancer of the eye, with blindness and the enormous devastation of the bulges protruding from the eyes; XXIII. Of the cleric Chini Raynaldutti, suffering from a chronic inguinal hernia on the right side. Therefore, having considered the Decree already published concerning the approval of virtues, and all other matters duly carried out in this Cause, We can proceed to the solemn canonization of the Blessed Clara of the Cross. Furthermore, We ordered that this Decree be made public, that it be recorded in the acts of the Sacred Congregation of Rites, and that Apostolic Letters be issued under seal for the solemnities of the canonization, whenever they are to be celebrated, on the third of the Ides of September of the year 1881. For the Most Eminent and Reverend Lord, Dom. Cardinal Dominic Bartolini, Prefect; Cardinal Di Pietro, Bishop of Ostia and Velletri; [signatures] Placidus Rulli, Secretary of the Congregation. December 8, 1881. For the honor of the Holy and undivided Trinity, for the exaltation of the Catholic Faith, and for the increase of the Christian Religion, by the authority of Our Lord Jesus Christ, of the Blessed Apostles Peter and Paul, and of the Venerable Brothers Our Cardinals, Patriarchs, Archbishops, and Bishops, present in the City, We decree

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and define, and We add to the Catalogue of Saints: The Blessed John Baptist de Rubeis, Lawrence of Brindisi, Benedict Joseph Labre, Confessors, and the Virgin Clara of the Cross, to be Saints; We establish that their memory should be observed each year by the entire Church, namely, that of John Baptist on the twenty-third of May, of Lawrence on the seventh of July, of Benedict Joseph on the sixteenth of April, among the Saints, Confessors, not Popes; and of Clara on the eighteenth of August, among the Saints, Virgins, to be devoutly remembered. In the Name of the Father, and of the Son, and of the Holy Spirit. Amen.

[*Latin ed. p. 239*]

ON THE SEVENTH DAY OF MARCH, IN THE YEAR 239, ON THE FEAST OF SAINT THOMAS OF AQUINAS, CONFESSOR AND DOCTOR OF THE CHURCH, IN THE NIGHT SESSION, Lecture IV. A most illustrious ornament of the Christian world and a light of the Church, the most blessed Thomas, born to Landulph, Count of Aquin, and Theodora of Naples, noble parents, even as a child showed a devotion to the Divine, which would be fulfilled in the future. For when a small scroll was found in his hand, upon which an angelic greeting was written, and the nurse, though denying it, tried to take it away, he held it fast with a firm hand; and when the mother took it away by force, he repeated it with tears and gestures, and soon swallowed it. When he was five years old, he was entrusted to the monks of Saint Benedict at Cassino. From there, he was sent to Naples for the purpose of study, and already as a young man, he entered the Order of the Friars Preachers. But because his mother and brothers considered this to be an unworthy thing, he was sent to Paris. There, the brothers, seizing him by force on the journey, led him to the fortress of the Knights of Saint John: where, after being subjected to various trials, he drove away a woman who had been introduced to undermine his constancy, even with insults. Soon, the blessed young man, kneeling with bent knees and praying the sign of the Cross, was seen to be held by angels at his sides while he slept, and from that time onward, he was free from all carnal desire. He persuaded the sisters, who had come to the fortress in order to dissuade him from his pious purpose, to devote themselves to the practice of heavenly life, setting aside worldly concerns. Lecture V. Having been released from the fortress through a window, he returned to Naples; from there, he was later led to Rome, and then to Paris, by Brother John the German, the General Master of the Order of the Friars Preachers, where he studied philosophy and theology under Albert the Great. At the age of twenty-five, he was appointed a master, and publicly interpreted philosophy and theology with the greatest distinction. He never devoted himself to reading or writing, except after prayer. In the difficult passages of the sacred Scriptures, he used prayer and fasting. Indeed, he used to say to his companion, his brother Reynold, that whatever he knew, he had not

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acquired through study or labor, but had received from divine inspiration. When he was praying more fervently before the image of the Crucifix in Naples, he heard this voice: "You have written well about me, Thomas; and what reward will you receive?" To which he replied: "No other, Lord, than yourself." He diligently studied the writings of the Fathers; and there was no kind of writing in which he was not most diligent. His writings excel in number, variety, and in the ease with which he explains difficult matters, so that his most abundant and uncorrupted doctrine, wonderfully agreeing with revealed truths, is perfectly suited to overcome the errors of all times.

[*Latin ed. p. 240*]

240. THE OFFICE OF SAINT THOMAS AQUINAS. Reading VI. Called to Rome by the Supreme Pontiff Urban IV, he, at his command, composed the office for the feast of the Body of Christ; he refused the honors offered to him, and also the Archbishopric of Naples, even though offered by Clement IV. He did not cease from preaching the divine word; and while doing so during the octave of Easter in the Basilica of Saint Peter, he healed a woman who had been suffering from a hemorrhage after she touched the hem of his garment. Sent by the Blessed Gregory X to the Council of Lyons, he fell ill in the monastery of Fossae Novae, where, while suffering, he explained the Song of Songs. There he died, at the age of fifty, in the year of salvation 1274, on the ninth of March. Even after his death, he worked miracles; these being proven, he was placed among the Saints by John XXII in the year 1323, and later his body was transferred to Toulouse, by order of the Blessed Urban V. Compared to the angelic spirits, not only in innocence but also in intellect, he rightly acquired the name of the Angelic Doctor, a title confirmed by the authority of Saint Pius V. Leo XIII, most readily accepting the requests and petitions of almost all the Sacred Prelates of the Catholic world, in order to combat the errors of many philosophical systems that stray from the truth, to promote the advancement of sciences, and for the common good of the human race, declared him, after consultation with the Congregation of Sacred Rites, the heavenly Patron of all Catholic Schools, by Apostolic Letters. ADDITIONS TO THE ROMAN MARTYROLOGY. March 9th. In the eulogy of Saint Thomas Aquinas, after the words "illustrious in science," the following should be added: "Whom Leo XIII declared the heavenly Patron of all Catholic Schools." OF THE CITY AND THE WORLD. In the year preceding, Our Most Holy Lord Leo XIII, by Apostolic Letters in the form of a Brief, dated August 4th, complying with the wishes of many diocesan prelates and other men of science, piety, and ecclesiastical dignity, after consultation with the Congregation of Sacred Rites, appointed Saint Thomas Aquinas, the Angelic Doctor, as the special patron of all Catholic Universities, Academies, Lyceums, and Schools, before God. And so that this solemn act might remain a permanent

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memory also in the sacred liturgy, Our Most Holy Lord willed that mention of it should be made both in the historical readings of the Breviary and in the Martyrology; which He entrusted to the Congregation of Sacred Rites for execution. In accordance with the wishes of His Holiness, new historical readings and additions to the eulogy in the Martyrology have been prepared, which I, the undersigned Cardinal Prefect of the Sacred Congregation of Sacred Rites, have presented, as shown by the preceding Decree, and which Our Most Holy Lord has approved with His supreme authority, and has commanded that they be recited in the future by the entire clergy of the Church, both secular and regular, including the Order of Preachers, suppressing entirely the readings of the second nocturn in the Office of the aforementioned Saint. Contrary to all that may oppose. October 14, 1881. L., I%, S. D. CARD. BARTOLINIUS, S. R. C. PREFECT. REV. FR. PLACIDO RALLI, Secretary. John Can. Ponzi, Substitute.

[*Latin ed. p. 241*]

241 In answer to the Most Holy Pope Leo XIII, concerning the address which the Prelates, convened in solemn assembly for the purpose of canonization, had before him in Rome, Venerable Brothers: The agreeable solace which the solemnities recently held with you brought to Us is increased and almost overflows daily, as We see you here so frequently, and We consider with wisdom and seriousness the words by which the reason for your frequent presence has been declared. For piety towards the Vicar of Jesus Christ moved each of you: and you judged that the prospects of returning to your sees would be most favorable, when your devotion to Us was renewed in testimony. In this matter, there is indeed a trace of divine benevolence, and a consolation not to be measured in Our concerns. For nothing can be more pleasing or desired than that the Bishops of individual Churches should, with the utmost harmony of spirit, wish the same things as We do, and feel the same things, not only in duty and office, but also in the voluntary communication of joys and sorrows with Us. In this very concord, and as if in a union of minds, the image and form of that admirable and plainly divine unity is revealed, from which the Catholic Church derives its strength and fortitude, and which even overwhelms the minds of adversaries with the admiration of its invincible greatness. For this reason, We give thanks to God, who is rich in mercy, and We earnestly implore, following the example of His Son, that all who are Christians may be one and perfected in one; and at the same time, We freely declare to you, Venerable Brothers, the gratitude and benevolence of Our heart, which corresponds equally and excellently to your outstanding affection. And now, the necessity for this concord, which We have mentioned, is even greater, because those who manage Christian affairs face the greatest

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difficulties to overcome, and endure very severe pains. For, as perhaps...

[*Latin ed. p. 242*]

242. RESPONSE. At this very time, our enmity with the Church of Christ, and with God Himself, is manifested: all things are inflamed by a sacrilegious and detestable war, the most bitter of which is directed against this Apostolic See, its force and flame turned upon it. What is intolerable is that the authority divinely instituted is attacked, which in the present state of affairs offers the principal and most certain hope of salvation. Indeed, if there is anything that can restrain the unbridled desires of men, if there is anything that can restrain the reckless insolence of the multitude within the bounds of duty, it is the Catholic Church, through its virtue, its doctrine, and its laws. No less foolish and impious is the hostile hatred directed against the Roman Pontificate, which, if for no other reason, certainly defends the benefits conferred upon all nations through its actions. And may the Italian people understand that whatever is expended in defending the freedom and rights of the Roman Pontiff, does not, as is often said, lead to danger, but rather to the lasting prosperity and greatness of Italy. In the meantime, as far as we are concerned, Venerable Brothers, let us steadfastly maintain this principle: to establish order, and to serve with the utmost diligence the common good, or rather, the salvation of all men, even of our enemies. For we have been instructed by the discipline and example of the Good Shepherd, Jesus Christ, who, when reviled, did not revile in return, but healed the world unwillingly and against its will. We, too, must devote ourselves to the safety of the people, and the more vehemently men attack us, the more strongly we must love them, and with God's help and assistance, strive to free them. Furthermore, in this great upheaval of events and times, we trust that most holy men will be forthcoming to help us and the entire Church, for whom we have arranged to bestow heavenly honors on future days. Emboldened by this most delightful hope, to you all, Venerable Brothers, and to the faithful entrusted to your care, as a pledge of heavenly blessings and a testament to our supreme benevolence, we impart the Apostolic Blessing in the Lord.

[*Latin ed. p. 243*]

243 FROM THE HOLY CONGREGATION OF THE COUNCIL OF PIUS, dated January 29, 1881. SUMMARY OF FACTS. Onuphrius Soriente established the aforementioned endowments on September 5, 1656, and among the pious bequests, it is worth noting that he left a sum to several churches, including the Chapel of Saint Mary of Gratiarum, located in the place called Casale Cicalensium, in the Diocese of N., as he stated in his will: "I bequeath to the Chapel of Saint Mary of Gratiarum four and a half measures of land... with the obligation, perpetually, that from the revenues, a chaplain shall celebrate as many Masses each year as are specified for the

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repose of my soul..." Regarding the designation of the person responsible for fulfilling the aforementioned obligations, the testator stipulated: "The Masses that must be celebrated in the Chapel of Saint Mary of Gratiarum shall be celebrated by him who is first among the priests of Cicalensium." In the year 1830, at the request of the Parish Priest, John Baptist, of Clyvum, within whose jurisdiction the Chapel of Saint Mary of Gratiarum is located, and while his own rector, Dominic Cicalese, was still alive, a royal decree was issued, by virtue of which this chaplaincy was transferred to the Parish of John, with the proviso that the full transfer would take place after the rector's death. A cleric, Gherard, originally from Casale Cicalensium, who, having received the sacred orders, remained without a title of sacred ordination, considered that he had the right to possess the land left by Onuphrius, and for his own benefit, he instituted a claim.

[*Latin ed. p. 244*]

244. The PIUS RELICTI parish priest. Concerning the title of *s. Patrimonii*, a document was issued on May 24, 1872, whereby Gherardo was obligated to pay annual sums of 363 *lire* on the income from the property bequeathed by Soriente, with the obligation of paying three hundred annual Masses; the Bishop notes that Gherardo retains 826 *lire* annually, with the obligation of offering 65 sacrifices each year. Having been promoted to this chaplaincy and having received the order of the presbyterate, and after having demanded the restitution of the entire property from the parish priest, Gherardo appealed to the Curia. Therefore, during the time of the visitation, the parties were heard regarding this matter, and on November 1, 1879, the Bishop himself resolved the matter in favor of the cleric Gherardo. The parish priest appealed to the Metropolitan, who issued a judgment: "The care of the Soriente legacy is to be held by the parish priest for the time of St. John the Baptist at Cleve; nevertheless, he must render an account each year to the Ordinary of the diocese regarding the administration performed. R. Gherardo, a priest from the diocese of Cicala, for the fulfillment of the same legacy, has the right to the entire chaplaincy, or to celebrate Mass daily with a stipend, according to the diocesan tariff, and furthermore, to obtain some supplement from the Apostolic See for the title of his sacred patrimony. The remaining Masses, after deducting expenses, which are to be fulfilled from the income of the aforementioned property, are to be celebrated by the parish priest for the time of the aforementioned parish, either by himself or by other priests." Gherardo, bearing this judgment with displeasure, on June 14, appealed to the Sacred Congregation, so that it might be declared null and void.

A SYNOPTIC DISCUSSION: DEFENSE OF THE PRIEST GHERARDO.

First of all, the patron of the plaintiff argued that the judgment of the

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Metropolitan Curia should be upheld. To prove this, he initially cited the canon law of both jurisdictions, which, according to the Sacred Congregations...

[*Latin ed. p. 245*]

PII RELICTI 245 resolutions are to be considered as the wills of testators, and especially those pertaining to pious causes and foundations, as if they were laws, and all must observe them in every way, according to L. XII Tabularum, Novell. 22 cap. 2, Can. 4 caus. 13 qu. 2, Clement. Quia contigit, De relig, dom.; Reiffenstuel. lib. 3 Decret, tit. 26 num. 798. However, it is incumbent upon the tribunals, as it is their duty not to create laws, but rather to apply them properly in specific cases, so that each may receive what is due to him, Fagnan. Cap. Quod superbis de maiorit, et obedient.; Barbosa de off. et potest. Episc, alleg. 93 num. 29, Piton, de controv. patr. all. 33 n. 37; S. C. C. in Civitatis Plebis 26 Ian. 1760 §. Ad ius. Only the Roman Pontiff, with a just and legitimate cause, can change the wills of testators and foundations intended for specific pious causes, or transfer them to other uses or causes, because the will of the testator is to be considered as law: Reiffenst. lib. 3 tit. 26 num. 804 et 807, cit. Clem. quia contigit, and every pious foundation, as long as it avoids the authority of other human powers with regard to non-fulfillment, violation, reduction, or alteration, contains a tacit clause: salva auctoritate Summi Pontificis, Amostaz de caus. piis lib. 1 cap. 14 num. 12; S. O. O. in millenis resolutionibus, ac praesertim in F aven. Capellaniae 7 Maii 1791 §. Deliberandum. Therefore, it is clear that only the power of the Pontiff can intervene in pious foundations, that is, in those testamentary dispositions which concern God and the soul, and that secular power has no right to interfere in them, Card. De Luca in adnot. ad Concil. Trid. disc. 21 n. 4 et seqq. Rota decis. 408 part. 12 recent. Therefore, it is evident that the royal authority exceeded the limits of its power when it dared to change or alter the pious endowment of Soriente. Moreover, it must be emphasized that this is true because the change involved a public loss, since the purpose of the pious foundation was completely eliminated. For, after the change, the inhabitants of that place, for whom -

[*Latin ed. p. 246*]

246. Those who, having made a pious bequest at Soriente, are compelled to seek out the parish church to hear Mass, find that it is at least a mile distant. Furthermore, regarding this supposed privilege, it is entirely rejected in the Concordat; and those privileges which are asserted by the Pontiff must, rather than being presumed, be demonstrated by authentic and irrefutable documents. It is of little benefit to cite the rescript of the Most Reverend Fabricius, Bishop of Peter, by which the parish was granted the right to retain the chaplain; for such a rescript was granted only for three years, and that period expired in the year 1830, whereby it has entirely

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lost its force. Nor is there any reason to fear that the law of August 15, 1867, will cause any detriment to the pious bequest. For, according to the terms of the will, it is clearly stated that the testator did not establish a benefice or an ecclesiastical chaplaincy, but rather left a bequest for Masses, which, as an accessory to the chapel, is an autonomous entity and cannot fall under the law concerning the suppression of existing institutions. Moreover, the administrator argues that the administration of the property belongs to the rector of the chapel of Saint Mary, and that the Masses, according to the judgment of the court, are to be celebrated partly by the chaplain of Cicala, and partly by the parish priest. Since the rector of the chapel is the priest Gherard, and he, therefore, being the only priest of Cicala, is entitled to the administration of the property and the right to celebrate all the Masses. *De Luca, De Legat., Dis. 25, n. 2:* "For when a bequest is made directly to a church, because it is expressly stated that an annual sum is to be left to the church for the celebration of Masses, then the bequest is owed to the rector of that same church." Therefore, it pertains to him to celebrate the Masses, as well as to administer the pious bequest, and to receive all the fruits, according to the clear will of the testator. The testator expressed what he wished, and what he did not wish; he wished that the priest of Cicala should celebrate all the Masses, and he did not mention any division of Masses between the priest of Cicala and the parish priest; therefore, the parish priest is excluded by the will of the testator.

[*Latin ed. p. 247*]

247. But furthermore, the argument to be refuted is this: the community of Cicala could not lose the passive right of patronage, which the testator had perpetually granted to them. This matter concerns not the active patronage, which the testator himself exercised by always calling the priest of Cicala first; but rather the passive patronage, to which all the people of Cicala have an exclusive right, indiscriminately, who wish to embrace the priesthood. Moreover, the Metropolitan's judgment is falsely based on a certain constitution regarding the sacred patrimony, drawn up by the parish priest, with the favor of Gherardi, in the year 1872, by order of a portion of the pious endowment of Soriente. For Gherardi has the right to the entire endowment, and the fact that the constitution of the patrimony was carried out in this way clearly demonstrates that the parish priest also recognized Gherardi's rightful claim; otherwise, the very words of the instrument of May 24, 1872, in which the parish priest himself does not add any right of active patronage to himself, would contradict this. It is useless for the patron to argue, on the contrary, that Gherardi, by his actions, renounced the administration and enjoyment of the entire pious endowment. Firstly, the word "renunciation" or any similar term is not found in the aforementioned instrument; for Gherardi, then being a minor, only understood that he was being granted a title for the time being, so

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that he might be able to ascend to higher orders. But even if he had tacitly renounced his claim through his actions, the act would always be considered null and void, because he could not change the will of the testator, who permitted that Masses be celebrated partly in the parish, partly in the chapel of Saint Mary, partly by the parish priest, and partly by a priest from Cicala. Moreover, Gherardi did not act freely, because, being pressed by the necessity of establishing a patrimony, he could not forcibly claim his rights from the parish priest, given the extreme poverty in which he was; therefore, he was forced to submit to the will of the parish priest, and to wait for better times to assert his rights.

DEFENSE OF THE PARISH PRIEST. The patron, defending the parish priest, attempts to protect his competence and the justice of the judgment with intrinsic arguments. First, he opposes the adversary's claim by presenting a transaction with his client.

[*Latin ed. p. 248*]

248. The will of Pii Relicti, dated May 24, 1872, was not only confirmed, but was even proposed by the Bishop himself. Indeed, the effect of the transaction was to settle the dispute, and to have the force of a judgment, and to bind the parties by oath, according to Leg. 2 ff. De iur., Leg. 20 Cod. De transad., Voet ad Band. lib. 2 tit. 15 num. 21. Therefore, since the question was settled by means of the transaction in such a way that the Parochus retained the administration of the property, with the obligation of paying to Gherardo the annual sum of 3,640 lire, together with the obligation of celebrating 300 Masses, it is clear that, until he enjoys the benefits of life, it can signify nothing other than the agreement between the parties. For nothing is more suitable to human faith than to observe what has been agreed upon. Leg. 20 Cod. De transad. Therefore, if, according to the judgment of the metropolitan Curia, something more than what was stipulated in the transaction was attributed to Gherardo, he should be content with his lot, and cease to raise objections against the judgment.

Then, expanding on the words of the will, he states that nothing is clearer than that the property of the *fundi* of the Chapel of Saint Mary of Gratiarum was bequeathed; whereas, otherwise, she possessed other goods, and was burdened with other obligations. Therefore, the defender affirms and maintains that the right to possess the property and to administer its revenues belongs only to the rector of the Chapel, both by law and by the presumed will of the testator, and that the testator never intended to transfer the ownership and possession of the property of the Chapel of Saint Mary to the priest of Cicala. For, since he had no power to choose the rector of said Chapel, and since the administration of all revenues pertains to the rector of the same Chapel, it follows that the administration of the property, bequeathed by Soriente, must belong to the rector of the Chapel, and that the priest of Cicala can demand from him nothing other than alms

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for the Masses to be celebrated, as requested by the testator. Furthermore, he states that the presbyter of Cicala, mentioned by the testator, has no right to possess the rectory of the Chapel, and that this was determined in the year 1703 by a judgment issued by the metropolitan Curia against Carmel Soriente.

[*Latin ed. p. 249*]

PII RELICTI 249 The foregoing points are increasingly confirmed by the fact that the testator did not specify a particular number of Masses or a specific amount for alms, but only desired that a certain number of Masses be celebrated from the revenues of the *fundi* of Fondi. It is therefore clear that the number of Masses to be celebrated at present should be determined by the revenues of the *fundi*, according to the diocesan tax. This is what the presumed will of the testator requires, and it must be said that he intended to provide a greater number of suffrages for the expiation of his own soul and that of his relatives. However, the revenues of the *fundi* are such that, according to the diocesan tax, they allow for the celebration of not only a daily Mass, but also other Masses. But the priest of Cicala, called by the testator, is only entitled to celebrate one daily Mass. Therefore, the general rule established by the testator remains in force, namely that other Masses must be celebrated by the chaplain, or the rector of the Chapel of Gratiarum, to whom, consequently, the administration and possession of the *fundi* also belong. But the rector of the aforementioned chapel is the parish priest of St. John the Baptist at Clivum, to whose parish all the assets pertaining to the chaplain of St. Mary of Gratiarum were united and transferred in the year 1830. Therefore, it follows that the possession and administration of the *fundi* from Soriente belong to the parish priest of St. John, and that the priest of Cicala can only claim the right to celebrate the daily Mass, along with the alms corresponding to the diocesan tax. It is wrongly objected that the union and transfer of assets, since they originate from a secular authority, are illegitimate and tainted with nullity. Indeed, it must be considered that, in virtue of both Concordats of Sicily, it was permissible to unite and transfer any benefices and chaplaincies; secondly, it must be considered that the King issued a decree ordering that the Bishop should proceed in this manner, which the Bishop promptly carried out, and which has been consistently observed and ratified by his successors up to the present day. The union...

[*Latin ed. p. 250*]

250. After these things, he adds: ”The wills of the deceased must be observed, and the aforementioned translation is to be preferred, and it is to be carried out by the Bishop.” It is clear to no one that the Bishop can, for legitimate reasons, unite benefices and churches within his diocese, as is stated in chapter 8, ”De excess.” Praelat. chapter 33, ”De praeb.” ; and this

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is taught by Ferraris, *Bibliotheca Eccl.*, under the word "Unio," number 9; Fagnan, chapter 8, "De excess. Prael.," numbers 8 and 9, and others. A just reason for uniting benefices, as stated by Ferraris in the aforementioned passage, is the necessity or utility of the Church: chapter 33, "De praeb...." Necessity for the Church is considered to exist when the prebend, to which the union is to be made, lacks sufficient revenues. Utility, on the other hand, arises when, due to the smallness of the fruits, suitable clerics cannot be found to serve; as has been demonstrated to have occurred in the case of the parochial prebend of the Church of St. John at Cleve, to which, with the help of a royal decree, the chapel of St. Mary of Graces was united with its appertaining goods. Therefore, after these matters have been carefully considered, the following question was put to the Eminents and Reverend Fathers: Whether the opinion expressed in the case of the Archiepiscopal court should be confirmed.

RESOLUTION. After mature discussion by the Sacred Congregation, on January 29, 1881, it was decided to respond: The opinion is to be confirmed.

COLLECTION: I. The wills of testators, especially those pertaining to pious causes and foundations, are to be held as if by law; so that only the Supreme Pontiff, with a just cause intervening, can change those same wills and foundations to other uses or causes.

[*Latin ed. p. 251*]

PII RELICTI 281 I. Concerning this matter, secular authorities have no right whatsoever to interfere in pious foundations, unless such a right has been granted to them by agreements (Concordats) with the Holy Pontiffs. II. It appears that the King was able, in the aforementioned agreement, to transfer a benefit, and that he transferred it at the request of the Bishop, who had recognized the necessity and the benefit to the Church in this case. III. It also appears that the property of the *fundus* belonging to the Chapel of Saint Mary of *Gracias* was left intact, which possessed other goods and was burdened with obligations; so that the priest of Cicala could demand nothing from that rector except alms for celebrating Masses, which were given by the testator. IV. If the pious testator did not provide either the number or the alms for the Masses, it appears, according to his presumed will, that as many Masses should be celebrated for the expiation of his soul as are possible with the revenues of the bequeathed *fundus*, according to the diocesan assessment. V. Now, since the revenues of the bequeathed *fundus* are such that, in addition to the daily Mass to be recited by the priest of Cicala, other Masses can also be celebrated, it follows that, according to the testator's presumed will, the rector of the Chapel of Saint Mary of *Gracias* will celebrate these other Masses, who, after the royal decree of the year 1830, is the same parish priest of Saint John the Baptist at *Clivum*.

RIGHTS OF PARISH PRIESTS. July 24, 1880, and January 29, 1881.

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SUMMARY OF THE CASE. In the town of N., there exists a Sodality of the Most Holy Annunciation, under the name of "Suffrage of Mercy," canonically erected with its own church, and which has been part of the Archiconfraternity of the Banner of the Alma City since the year 1681.

[*Latin ed. p. 252*]

252 OF PAROCHIAL RIGHTS. This matter was brought before the highest magistrate of the Piedmontese government in the year 1775, summoning the Parish Priest to appear, due to the free exercise of certain functions; and the dispute burned fiercely until August 5, 1780, when a final decision was imposed upon it with solemn transaction, in the presence of the General Vicar of that time, duly appointed, and mutually accepted. In this, the rights and obligations of both parties were clearly declared, so that the matter proceeded peacefully until the year 1879. Indeed, when the confreres, having requested the Bishop in a simple letter to erect their church as a parish chapel, the Bishop considered their requests to be favorably received, and, having issued a decree of erection on June 13, 1867, he reserved the right to appoint the rector, and expressly stipulated that the functions to be performed in the aforementioned chapel should not be carried out by the confraternity without first inviting the Parish Priest, and, in short, that nothing should be changed from the initial agreement, and that things should remain in the same state in the future. However, the confreres, influenced by some individuals, whose livelihood the Parish Priest had previously sometimes corrected, attempted to argue, both regarding the erection of their own church as a chapel, and regarding several decrees of the Holy Congregation, that they had the right to perform functions independently of the Parish Priest; and therefore, in order to defend their own rights, they approached the Bishop, who, refusing to resolve the matter, advised the administrators of the confraternity to appeal to the Sacred Congregation of the Council. However, in the meantime, he instructed the rector of the aforementioned church not to presume to introduce any changes, and forbade him, under penalty of suspension, to perform any functions without the consent of the Parish Priest. Upon receiving this response, the confreres immediately presented a petition to the Holy Office Congregation.

A Synopsis of the Dispute. RIGHTS OF THE SODALITY. The patron of the confraternity strives with all his might to vindicate the right to perform the aforementioned functions for the pious sodality. And first, he argues that this is evident from the purpose of sodalities, which consists primarily in the gathering of the faithful for works of piety.

[*Latin ed. p. 253*]

253. The rights of the parish can fulfill this; from which it is believed that confreres can accompany the bodies of the dead to burial, for this is not only beneficial for the public utility of the living, but also for the

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good of the soul of the deceased, as stated by Amortaz, *De Causis Piis*, Book 6, chapter 7, paragraph 5. Secondly, it is argued that the confraternity is exempt from the parish priest in performing non-parochial functions. To prove this, the speaker cites the well-known general decree of the Sacred Congregation of Sacred Rites of December 10, 1703. Regarding the doubt "Whether confraternities in other public churches have, concerning the same functions (non-parochial), any dependence on the parish priest within whose parochial boundaries the churches are located?", the response was: "No." In the same decree of the Sacred Congregation, the speaker claims that the pious confraternity has the right to hold sermons in its own church during Lent and Advent, with the prior consent of the Ordinary, and also the right to celebrate Mass, but under the condition that it is not done on feast days before the parochial Mass is celebrated; for in the aforementioned decree, paragraph 10 states that confraternities can celebrate a solemn Mass on the more solemn feasts of the same church or oratory. These are general principles of law. But the speaker continues, the parish priest is not aided by any special right; for the agreement or transaction made after the death of the parish priest of Bergontii was entirely a personal and amicable settlement, which was intended to ensure that there would be a lasting and permanent harmony between the successors of Bergontii and the confraternity. Therefore, its value and obligation to the successors is minimal. But even if the transaction were true: what then? It had no validity, for any transaction concerning ecclesiastical matters is void without the apostolic approval, even if it concerns a transaction to be made between ecclesiastical persons, as stated by Pignat, *Consilia*, 114, paragraph 17. This doctrine is further confirmed by the Council of Trent, Session XII, chapter 11, which anathematizes those who presume to usurp the goods or rights of the Church, or to hinder its jurisdiction. Nor does custom invite the parish priest to functions...

[*Latin ed. p. 254*]

254 Regarding parochial rights, it is argued that, in this case, a particular right has been sought for the same; since a binding and enforceable custom cannot arise from optional acts (C. de can. 447, n. 84; Surd. Constit. 127, n. 81; S. Rota in Calaguritana - Decimarum s. Petri, June 1697, §, without correction, Molines). Furthermore, it is not the case that a diocesan synod, in which only new confraternities are prohibited from being established without the Ordinary's permission, and from disturbing the parochial functions; from which, it is concluded, that a chaplain cannot independently of the parish priest perform non-parochial functions. PAROCHIAL RIGHTS. On the other hand, the defender for the Prelate argues that the parish priest's right to perform sodal duties is not impaired, but rather he strives to prevent the sodality from claiming new duties for itself and from celebrating them without the parish priest's

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consent. Furthermore, he asserts, based on the authority of the Sacred Congregation of Rites and Benedict XIV, that the sodality believes it has the right to perform all duties that it would like to introduce today. Regarding the decree of the Sacred Congregation of Rites, it is true that the Congregation has established that many functions are not subject to parochial jurisdiction, but it added: "And so, with due regard to any conventions and agreements made in the erection of confraternities, concordats, agreements between parties, approved by the Holy See, Indults, synodal and provincial Constitutions, or immemorial or at least centennial customs." Benedict XIV used almost the same words in Institutiones. Therefore, the entire question seems to depend on whether the customs established by the diocesan synod and the agreements between the parties must be observed. And regarding custom, let no one be unaware of the force that a custom of centennial or immemorial observance has in all controversies. The advocate believed that this should not be confirmed by the opinions of doctors; but he noted that a special custom has a particular force when it is a matter of precedence, as testified by De Luca of Patti.

[*Latin ed. p. 255*]

OF PAROCHIAL RIGHTS, section 255, chapter 19 concerning regulations, number 7, and in chapter 1 concerning regulations, number 61. From the aforementioned decree of the City and the World, as anyone can see, such a custom acquires force, so that the very decree must yield to it. In this matter, an ancient custom establishes a right for the parish priest: for thirty witnesses, with one voice, have testified in the town; all the elders, both by sight and by hearing from their ancestors, testify, and what they have handed down, concerning the functions to be performed by the parish priest with the confraternities, priests, and officials, agrees with the testimonies. This custom has existed from very ancient times, until the present time; and it is said that, after the most recent erection of the church as a parish subsidiary, new functions have not been performed, as the witnesses clearly assert. After explaining the reason for the custom, it discusses diocesan law. Furthermore, in almost all the dioceses of the subalpine kingdom, either by custom, or by the decrees of the diocesan synod, the ecclesiastical faculties granted by the Sacred Congregation of Rites cannot be used, as the Synods of Alba, Pompeii, Derthonen, Ventimiglia, Nice, Turin, and many others testify. And it should not seem surprising to anyone that a bishop can, not only according to, but even contrary to, the law, issue synodal constitutions. From *De Luca, de emphyt.*, section 36, number 6. This, therefore, was the reason why the Sacred Congregation of Rites, in the decree of the City and the World, granted the power to the bishops to amend and interpret the law, who, above all others, understand what is expedient for the good of the flock, with these words: "with due regard for

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synodal and provincial constitutions." But what diocesan synodal constitutions concerning this matter existed in this case, the confraternity does not conceal. In the year 1764, Bishop Casati compelled a synod, which still prevails today in the diocese, and decreed: that new functions should not be undertaken by confraternities, without the express written permission of the bishop; and soon after, the priests in the confraternities, employed in divine matters, obey the parish priests in all things. Nor has the confraternity obtained permission from the bishops to perform new functions. Finally, it discusses concord, which is of the greatest importance at the present time.

[*Latin ed. p. 256*]

256 The civil authority claims the right to judge matters pertaining to parochial rights. Indeed, the Sacred Congregation of Rites included this among the exceptions, stating "provided that previous agreements between the parties remain in force," thus indicating that judgments should be based on agreements rather than laws. However, in a dispute resolved by a solemn agreement between the parties, which is to remain unchanged, and to which due respect must be given to the parish priest, it was stipulated: "It shall be permitted, as stated in the agreement, to perform those public functions in the oratory which are customarily performed; and those functions shall not be performed without prior invitation and the presence of the parish priest, or his deputy; nor shall any new public functions be introduced under any pretext." Although this agreement was not confirmed by civil authority, this does not invalidate its firmness; and it is unheard of for a transaction entered into between parties to be confirmed by a judge. For it is a matter of private law to initiate a dispute and to resolve it privately; but by a well-known law, the parties have the right to define the dispute by agreement, without the authority of the judges. Furthermore, concerning the decree of the Apostolic See, it is cautioned that apostolic approval is required when matters of alienating rights are involved; but not when a certain preeminence is established through an agreement that ends the dispute. The Rota, in decree 607, before Oliveto, number 6, item 50, decision 891, item 3, paragraph 2, item 11-12, before Motines. But, although apostolic approval may have been necessary, it is presumed, especially after a long and consistent observance of the agreement, that it was granted, since it would be absurd to introduce such changes after such a long period of time, which would undoubtedly lead to discord. The Rota, in decision 897, item 11, before Molines, item 3, paragraph 2, and in the alleged decision 891, item 11, decision 44, § 6, paragraph X, Recent. De Luca, discussion 68, on feudal matters, item 11. And the objection should be disregarded that all functions may be performed in the oratory, from which a parish chapel was established; for the Bishop, when issuing the decree for this purpose, ordered that nothing

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be changed; and the members readily accepted this.

[*Latin ed. p. 257*]

REGARDING PAROCHIAL RIGHTS 257. Neither the nature of a church subsidiary, nor the law itself, permits the Sodalitas to claim anything from the parish, because a church is established as a subsidiary in order to provide for the benefit of the parish, and it acquires no property of its own, but only that which is derived, and only to the extent that it is deduced from the literal text of the concession. Rota decisions, 239, number 4, page 2, before Olivario: "It must be considered a rule that everything is to be denied to a filial and auxiliary church which does not appear to have been granted. Indeed, the filial and subsidiary church is entirely subject to the mother or parochial church," as stated by Cardinal De Luca, decree 33, number 6, concerning the parish priest; Reiffenstuel, volume 1, decision 2, title 28, § 29. Rota decisions, 536, before Olivario. Having established this subordination, it affirms that there is no further room for discussion, because the Congregation of Rites, in the well-known decree which the members presented, regarding the question: "Do these confraternities established in chapels or oratories, whether public or private, annexed to and dependent on parochial churches, maintain this dependence on the parish priest with regard to these (non-parochial) functions?" gave the affirmative answer. Therefore, having considered these matters from various perspectives, the Most Reverend Fathers, with prudence, sent a decree to clarify the following question: And which functions can the members of the confraternity perform through the chaplain, independently of the parish priest, in this case? RESOLUTION. The Sacred Congregation, after deliberation on July 24, 1880, responded: "The concord of August 5, 1780, must be observed in all things." However, on January 29, 1881, at the request of the Sodalitas, the following question was proposed in the form of a doubt: "Should we adhere to or depart from the decisions in this case?" and the answer was given: "Adhere to the decisions, and further." Acts, Volume XIV, page 112, number 12.

[*Latin ed. p. 258*]

258 OF PAROCHIAL RIGHTS: From which it may be gathered: I. From the decree of the Congregation of Sacred Rites, it is understood that agreements, pacts, and concordats entered into between parties possess such force that the law itself must yield to them, as is stated in the aforementioned decree: "with the exception of agreements entered into between the parties." II. In the matter concerning the solemn concordat of the year 1780, entered into between the Sodalitas and the Parish Priest, and mutually accepted by both, the rights and obligations of each party were clearly defined and declared. III. Therefore, the Sacred Congregation responded in the following manner: the concordat of August 5, 1780, must be observed

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in all respects; in which it was already determined what functions could be performed in the aforementioned oratory, with the intervention of the Parish Priest.

CHANGE OF INTENTION: On January 29, 1881, a summary of prayers. Jerome Dingli, in his last will and testament of the year 1791, bequeathed to the Church of the Minor Conventual Franciscans, located in the city of M., a lower order of rooms, commonly called a "mezzanine," subject to the condition that three shillings from the revenues of the same would be ceded to the Confraternity of the Most Holy Conception, established in the church, and the remainder would be used for alms for the celebration of Masses. This house, which is administered by the aforementioned Confraternity, and which is estimated to be worth approximately three thousand livres, and is located at 150 [address], has, in recent times, been...

[*Latin ed. p. 259*]

COMMUTATION OF WILL 259. By a benevolent concession of the Holy See, a certain Alphonso Dingli was granted a patrimony, together with the obligation of paying a legacy to the Confraternity and of celebrating twelve annual Masses. However, he relinquished his clerical habit and, having pursued the legacy, it was, initially in 1879, received by the Sodalitio only after a legal dispute. Francisca Dingli, the testator's granddaughter, mother of eight children, to whom her husband could not provide support through his labor and industry, appealed to the Sacred Congregation of the Consistory, humbly requesting that the administration of the aforementioned property be granted to her, with the condition that she pay three scudi annually to the Confraternity, and also fulfill certain obligations regarding Masses to be determined by the Sacred Congregation of the Consistory; the remainder she would dedicate to the support of her family. The Bishop, consulted according to custom, reported that the Confraternity opposed the change, as it was entitled to demand approximately two hundred scudi due to the aforementioned legal dispute and other expenses incurred for other reasons. The petitioner was commended, as she is truly the testator's granddaughter, and it is stated in the testimony of her own parish priest that she is not wealthy, but is burdened by a large family. Therefore, it was decided that, reserving three scudi for the pious Sodalitio, half of the remaining amount should be given to the petitioner for support, while the other half should be ceded to the Sodalitio until the extinction of its debt.

SYNODIC DISCUSSION. THE GRANT OF GRACE SEEMS TO BE DENIED. The supreme will of the dying, especially when directed towards pious causes, must be held and religiously observed, according to both law and a sacred bond, as is evident in Clement. Because it happens. Concerning religious houses, and Leg. I Cod. De sacros. Eccles.; therefore, a commutation is difficult to grant, unless a just and necessary cause intervenes, as prescribed by the Council of Trent, session 22, chapter 6, concerning

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the form. And even though the poverty of descendants is often considered among the just and sufficient causes for a commutation of will, this...

[*Latin ed. p. 260*]

260 The commutation of a will, however, ought to be a grave matter, and one to which recourse is had only when no easier means of assistance are available. Indeed, these extreme circumstances do not seem to be present in the case of Francisca, if her husband is still alive and in such good health that he is able to work; and it appears that he can, and indeed does, earn something, though perhaps not abundantly, which is sufficient to support the family. Furthermore, this can also be ascertained from the testimony of the Bishop, who does not declare her to be absolutely poor, but rather not wealthy. Moreover, the Brotherhood, which has an interest in the matter, is opposed to the commutation of the will, and such dissent is not to be condemned, but rather supported by valid arguments. For the Brotherhood has expended a considerable sum, both because of a dispute with Alphonso Dingli, and for other reasons, through the generosity of the legate; and it is uncertain how soon it might recover the money, and at what great loss, given the time it would have to wait. GRACE SHOULD BE EXTENDED. It is, on the contrary, to be presumed that the testators would not have denied assistance to those who are strictly related to them by blood, if they had witnessed their misfortune, their hardships, and their poverty. Therefore, it is permissible, and indeed rather appropriate, to say that some alteration of the testamentary provisions should be made, not in a way that is contrary to, but rather in conformity with, the will of the testators. This most just presumption is also upheld by numerous decrees of the Sacred Congregation, as can be seen in Taurinen, March 30, 1776; Ferrarien, Reduction of Masses, February 22, 1793; Sorana, Suspension of Nomination, December 3, 1831; and many others, including Camerinen, December 20, 1834. And although extreme poverty is cited as a just cause for the commutation of a will, there are also examples in the Sacred Congregation in which the commutation was granted even because of grave need, as can be seen in the examples in Januen, Capellania, July 31, 1819; Callien, Pergulana, Absolute Reduction, December 20, 1823; and Sabinen, related in the Summaria precum diei, August 8, 1863. It is also known from Asculana Disp., December 20, that the Sacred Congregation has often considered not only absolute, but also relative poverty.

[*Latin ed. p. 261*]

COMMUTATIONIS VOLUNTATIS May 26, 1786, Aquen. Chapel, February 3, 1787, Montisalti Benefice, June 27, 1829, Camerinen. Chapel, and elsewhere. In these cases, more circumstances are presented which suggest that the petitioner is not merely in relative and common poverty, but indeed in absolute and extraordinary poverty. For she is the mother of eight children,

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to whom she must provide food, clothing, and lodging, and to whom her husband cannot sufficiently provide assistance. She must not consider, in matters of profit, what is abstractly possible, but what is actually the case. Furthermore, it is clear to all that one man cannot support such a large family solely through his own work and labor. Given these circumstances, anyone who understands even a little of a mother's love for her children can easily imagine the daily bitterness with which this mother of a family lives. Therefore, the petitioner appears truly deserving of some compassion. Having noted these things, the question of granting the petitioner's prayers was considered. The response was as follows: RESOLUTION. The Sacred Congregation, after discussion on January 29, 1881, decided to respond: "Provided that the grace remains, according to the petitioner's wish, one Mass shall be celebrated each month, for the Bishop, for a period of five years, as promised." ABSOLUTION AND EXONERATION. On January 29, 1881, through summary prayers. COMPENDIUM OF THE CASE. Count George Ross, in the year 1827, established a perpetual endowment for one daily Mass, with an annual sum of eight hundred, to be paid to the celebrant as an alms, independently of the Ordinary.

[*Latin ed. p. 262*]

262. ABSOLUTION AND REMISSION. To fulfill the obligations declared, the family of B. descends, the eldest being B. Although Aloysius B., being sixty years of age, has benefited from the aforementioned endowment for a long period, and continues to benefit from it, nevertheless, having fulfilled the obligations attached to the endowment, he suffers from extreme poverty, and is burdened by a large number of children. Therefore, prostrate before the Most Reverend Fathers, he pleads for absolution regarding the past, and for remission of the aforementioned obligations in the future. The Bishop, when consulted according to custom, stated: "The parish priest has informed me that the family of Aloysius B. is greatly afflicted by poverty, and that the requested grace is worthy of consideration. Therefore, he believes that a temporary absolution should be granted to this family, so that only the recitation of the Rosary or other small acts of Christian piety are required for the time being."

SYNOPTIC DISCUSSION: THE GRACE SEEMS TO BE DENIED. And indeed, it does not seem fitting to grant absolution from past omissions to the aforementioned person, given his bad faith, in which case, as is the custom, the Congregation usually denies the grace, as is evidenced, among other resolutions, in the decree of the Congregation of Religious, November 26, 1797, question 2. And rightly so, since it is not fitting for anyone to receive a reward from malice, as taught in Nov. 123, title on sanctions, chapter 6. But neither is absolution granted, as can be seen from the decree of Benevento, Absolutions and Remissions, June 21, 1879, section. These are the foundations for obtaining such graces: good faith. However, in this

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case, there is no doubt about the bad faith of Aloysius B. Indeed, he was concerned about securing the benefits of the endowment for himself, but he did not care about the celebration of the Masses, and he did so for a long period, as is clearly evident both from the suppliant's own petition and from the letters of the Prelate.

[*Latin ed. p. 263*]

ABSOLUTIONS AND REMISSIONS 263. Furthermore, the remission should be denied to the Orator in the future. For it is known, and both law and canon law proclaim, that the wills of the deceased must be guarded piously and religiously (L. 120 ff. de Verb. Sign., Cap. Contingit; and Clement. 2 de Relig. domibus, especially if they pertain to divine worship; Can. Ultima volunt, caus. 13, q. 2). The matter at hand concerns the relaxation of the obligations of Masses, which are most closely related to divine worship, and therefore every effort should be made to preserve them, as the Sacred Congregation of Rites has repeatedly stated, especially in the documents *Nullius Montis Virginis Reductionis servitii Chori et Missar*, June 14, 1823, and it should be remembered that the Sacred Congregation of Rites has a practice of preserving the foundations of Masses to the greatest extent possible, as can be read in *Romana Subsidii*, 1852, §. However, in the present case... It is not permissible for the Orator to be granted a remission based on the fact that he himself is suffering from poverty and is burdened by a large number of children; indeed, the Holy Office has repeatedly denied the remission of the obligations of Masses, even in the case of poor persons, as is evidenced by the decrees issued in Milan, *Fund.* May 20, 1752; *Melevitana*, April 23, 1768; *Nullius Nonantulae*, December 17, 1791. From what has been discussed so far, it would seem that the Orator should be entirely denied the requested grace.

GRACE SHOULD SEEM TO BE DENIED. However, on the other hand, it may be argued in favor of the Orator that, if there is a just cause, absolution from past omissions, and even remission in the future, are often granted. Furthermore, it is easily deduced from numerous decisions of the Holy Office, especially those issued in *Feretrana*, September 17, 1808; *Civitatis Castellanae Absolutionis*, January 22, 1842; *Massen. Pii legati*, April 23, 1842, which are available in the archives, as well as in *Eugubina* and *Civitatis Castelli*, November 20, 1824, through summaries of petitions, that the inability to fulfill past obligations is a legitimate reason for granting absolution, even with regard to the celebration of Masses. And in *Firmana Leg.*, May 31, 1721, and *Spalaten. Exonerationis*, February 15, 1879, remission has been granted for the same reason. And it is certainly a wise decision, as the saying goes in everyone's mouth...

[*Latin ed. p. 264*]

264 The obligation of that which is impossible creates neither an obliga-

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tion nor a debt. *L. 1, 3, 5, seq. de R. L.; L. 1, 8, 5, Cod.; Regul. 6 Juris in 6.* However, concerning the moral impossibility for the Orator of fulfilling the bequest, it does not seem that any doubt can arise, provided that the parish priest of the Orator testifies to the extreme poverty of the family of Aloysius B., and the Bishop reports that the Orator is in absolute impossibility of fulfilling the obligations of the bequest. Therefore, it seems that his wishes could be granted, especially if it is considered that it concerns assisting a family very dear to the Testator, as it is the family that he wished to benefit from the patronage provided by the bequest of Masses.

RESOLUTION. The Sacred Congregation, on January 29, 1881, responded with great favor, granting, according to the vote and judgment, a DISPENSATION from the irregularity.

On January 29, 1881, by means of a summary petition,

COMPENDIUM OF THE CASE:

Ludovicus G., a deacon afflicted for four years by the disease of epilepsy, on March 3, 1880, humbly presented a petition to the Sacred Congregation, requesting that they grant him a dispensation from the irregularity, so that he might lawfully be promoted to the order of the sacred priesthood. These petitions were presented by the Bishop himself, along with his own commendation of the aforementioned Deacon, due to his piety and knowledge, by which he excels. Concerning the state of health of the aforementioned Deacon, the Bishop noted the following: "He is in a very grievous condition." The physicians disagree concerning the cause of his illness, and for four years he has experienced...

[*Latin ed. p. 265*]

DISPENSATION FROM IRREGULARITY 265 « condition. Such attacks, which occur less frequently, and originate primarily from « indigestion, are not experienced during the day, but at night when the first rest begins. The deacon has faithfully performed his public duties, and has never been afflicted by illness. » After considering these facts, a response was issued on April 14 stating: « Delayed. » However, the prayers presented by the Bishop were renewed by the aforementioned Advocate on November 20 of the past year, which he again strongly recommended. At the same time, as before, he noted that Lewis had frequently performed the duties of a deacon, and had never been afflicted by illness, and that he could faithfully exercise the duties of a chaplain daily, and, according to the testimony of the physician, could hope to regain and maintain perfect health.

SYNOPTIC DISCUSSION: GRACE MUST BE DENIED. It is certain that those suffering from epilepsy should be kept away from the exercise of the orders, and even more so from advancement within them, as stated by no one after the disposition of the text in Cap. In tuis 7, q. 1, Cap. Communiter

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3, dist. 33, and the Glossa there. On this matter, it is advisable to consult, among others, Gonzalez, *Commentaria* in Cap. 21 *De elect.* et *elect. post.*, n. 18, where he states: « Whether suffering from a more severe or a milder form of epilepsy, he is not fit to ascend to the sacred orders. » And Ferraris, *Bibliotheca Canonica Universalis*, verb. *Irregularitas*, no. 12, *Bei ff.*, lib. 1, *Decret*, tit. 20, no. 19, agrees. This most wise disposition of the canons should not be relaxed easily, since it is indecent and dangerous that a priest, while celebrating the Eucharist, should be overcome by an epileptic fit, as Alexander II aptly observed in cap. 1, q. 2. Furthermore, the testimony of the physicians states that he is afflicted by this illness once a month, which makes the epilepsy seem more severe in its frequency, and therefore the strictest adherence to the canons is most necessary. Even if it is said that Lewis only suffers from this illness at night, it does not entirely avert the danger of falling during the consecration of the Eucharist. For, as experience testifies, a convulsive illness can sometimes become more and more severe.

[*Latin ed. p. 266*]

266 A dispensation from irregularity is often granted, and it can happen suddenly, as it does now, secretly during the night. PRAYER IS NECESSARY. However, it must be considered that the ailment in question is contracted without fault, from which absolute irregularity does not arise; but one should act in such a way that a person is not considered irregular, as long as, according to the judgment of physicians, he can safely approach the altar while suffering from the illness: Schmalz, *Jus Can.*, vol. 1, part. 3, title 20, no. 1. Indeed, if the testimonies of the physicians are considered, and if it is noted that the attacks occur with decreasing frequency over a short period of time, and always during the night, it is easily understood that the aforementioned Deacon can safely approach the altar. This is so true that the Archbishop himself testifies that he has often seen the Deacon and chaplain performing their duties, and that he has never been afflicted by the illness. Therefore, if the Deacon can safely perform his duties, nothing prevents him from safely approaching the altar to perform the duties of a priest. Nor is it far from the truth that the Sacred Congregation has granted similar dispensations in similar cases. Having set aside the resolutions issued in Volaterrana on July 9, 1825, at the residence of Camberini, as well as those issued in Treviren, the dispensation from irregularity issued on January 11, 1868, which was included among the petitions, it seems more appropriate to refer to the dispensation from irregularity issued on January 26, 1878, which was also included among the Summaria Precum. There, the case of the cleric Rafia was considered, who suffered from a fleeting illness only during the night, and was often overcome by heavy sleep. Although he had been afflicted with this illness for thirteen years, he requested the faculty to be promoted to the sacred orders, and a decree was

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issued after deliberation: For the granting of habilitation and dispensation, let it be known to the Most Holy. RESOLUTION. The Holy Congregation responded: For the granting of the dispensation, let it be known to the Most Holy, and for the granting of habilitation, let it be known on January 1, 1881.

[*Latin ed. p. 267*]

267 FROM THE CONGREGATION, OF BISHOPS AND REGULARS, CONCERNING THE RIGHT TO BEG. Dated March 18, 1881. SUMMARY OF THE CASE. Father Theodore, Custodian of the Brothers Capuchins in the city of R., presented a petition to the Sacred Congregation of Bishops and Regulars, explaining as follows: Since the year 1626, when the convent of his Order was founded in that city, it had been granted to the Brothers Capuchins the faculty of collecting alms only within the city and territory of R., so that no prejudice would be caused to the neighboring religious communities. However, the Fathers of the Passion of Our Lord Jesus Christ, who reside in the sacred retreat (called S. Angeli), located approximately seven Roman miles from the city of R., had, in recent years, begun to seek alms within the city and territory of R., which, as they themselves knew, had been the case since the year 1760. The Custodian of the Capuchins, therefore, requested that the Sacred Congregation take action against the Fathers of the Passion. After hearing the information presented, those presiding over the Congregation decided that the matter should be submitted to the judgment of the entire Congregation. SYNOPTIC DISCUSSION. ARGUMENTS OF THE PROVINCIAL OF THE CAPUCHINS. The fact that the convent of R. is located outside the city, makes this case particularly important.

[*Latin ed. p. 268*]

268 Regarding the matter of begging, it was proposed that, in the year 1628, when the Congregation of the Religious was established, in order that no prejudice might arise to other mendicant Orders from the collection of alms carried out by the Capuchin Fathers, the faculty of collecting alms had been prohibited within the city and territory of R. Indeed, for this reason, the Municipality granted the Capuchins annual sums of 223, and the Government granted sums of 60, which, however, were lost to the air due to the unjust law of suppression. It is reported with certainty to the Fathers of the Congregation of the Passion that a decree already existed from the same Sacred Congregation of Bishops and Regulars, published on November 28, 1760, which stated as follows: "The Eminent Prelate having explained the reason for the request, it is decreed that the Fathers of the Passion shall not be permitted to beg in the city of R." It is, therefore, necessary for them to oppose the Bull of Clement X, of blessed memory, which begins *Supremi Apostolatus*, issued on November 15, 1769, by which the Fathers

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of the Passion were granted the faculty of collecting alms for three years, namely, during the harvest, the grape harvest, and the olive pressing, in every Diocese; for this could not be done without the prior permission of the Ordinary. Indeed, in the year 1782, the Vicarius Capitularis refused to grant the Fathers of the Passion such permission, knowing the prejudice against the Capuchins, and the lack of means for them to live. It is certain that subsequent Bishops have usually granted permission to the Fathers of the Passion to seek alms; but it is also certain that, within the year, these same Bishops have usually granted extraordinary subsidies to the Capuchins, as can be seen from the administration books. After the suppression of 1875, the Fathers of the Passion met in a house in the city of R, and at that time, the Capuchin Fathers made no complaints that the Fathers of the Passion were collecting alms. But when the Fathers of the Passion were able to return to their monastery of St. Angel, that same tolerance could not be maintained; therefore, it is just that the Capuchin Fathers should...

[*Latin ed. p. 269*]

In these circumstances, concerning the matters necessary for leading a life, the Capuchin Fathers are deficient. Nor does the response hold true, as stated in the Bull "Supremi Apostolatus." Indeed, the Passionist Fathers continue to raise questions concerning the alms which they collect in neighboring dioceses. Furthermore, the same Holy Congregation of Bishops and Regulars decreed in a rescript of Ventimiglia, June 22, 1674, "that in the future, no Convents of established Orders should go out to beg, but that each should remain within its own limits, so that they may be more easily supported by those to whom they minister." Moreover, in order that others may not be deprived of sustenance, Clement XIV, in the same Bull, wished to caution that the Passionist Fathers should only collect alms with the permission of the Ordinary, and after obtaining prior permission from the Ordinary. Therefore, it is unavoidable, given the present circumstances, that either the Capuchin convent will be considered abandoned, or that the religious family will be diminished, to the detriment of the Divine worship and the spiritual good of the faithful. Therefore, it is fitting to apply the canonical axiom which states: A privilege, which is partly favorable and partly odious, must be restricted, insofar as it prejudices either another or the Divine worship (Fagnan, *de praebend.*, Cap. Licet num. 13). It will not help to assert that the Passionist Fathers themselves also labor for the spiritual benefit of the same people. For it is one thing to provide continuous and persevering assistance, as the Capuchin Fathers do, and another to offer that occasional help which the Passionist Fathers provide, perhaps once or twice within the year.

REASONS OF THE PASSIONIST FATHERS. From the aforementioned Bull of Clement XIV, which begins "Supremi Apostolatus," dated November 15, 1769, they deduced the right that was due to them for the collection

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of alms (1). Since this Bull was issued nine years after a letter from Cardinal Cavalchini, Prefect of the Holy Congregation of Bishops and Regulars, and since the Pope...

[*Latin ed. p. 270*]

270. Concerning the right to solicit alms, it has been granted to the missionaries that they may not be hindered, disturbed, or prohibited "by anyone" from seeking alms, even if necessity compels them, even in dioceses where "no house of the same Congregation has yet been established"; and this permission is granted to them, with the express understanding that it derogates from any privilege granted to other Orders, both Regular and Mendicant, which argues, they maintained, that it is an injustice to deny them the right to collect alms in the Kingdom. Furthermore, they added, there is no lack of precedent in this matter. Indeed, the Rector of the house of St. Angel, as soon as he arrived in the current diocese, requested and obtained in writing permission from the current Ordinary to solicit alms throughout the entire territory of the diocese. Moreover, all the predecessors of the current Ordinary have issued a similar decree, with the exception of the late Bishop N., who was of the Order of the Capuchins. They also pointed out that it should not be overlooked why the Holy See has granted such a broad permission regarding the collection of alms. For it is the characteristic of the Order of Christ's Passion not only to diligently strive for its own sanctification, but also to constantly exercise the sacred ministry, both at home for those who come to them from nearby, and in other dioceses to which they are called by the Ordinaries. Therefore, in order that the Order may fulfill this twofold purpose, a not insignificant number of religious is required for each house. Thus, it happens that at the house of St. Angel, there are sometimes as many as thirty, a number which is not sufficient for the needs of the people. Moreover, it happens that the houses are separated from each other by many miles, so that the families of religious may not lack sustenance from the alms collected from many places and brought together. One objection is raised regarding a decree issued by the Vicariate Capitular of the Diocese of S. in the year 1782. But this objection is weakened, since it is certain that subsequent bishops of this diocese have, in fact, abrogated this decree. Moreover, this fact, having lasted for so long, clearly excludes any judgment to the contrary. And in truth, it is remarkable that the increase in the number of religious families has been accompanied by a corresponding increase in the collection of alms.

[*Latin ed. p. 271*]

UPON THE QUESTION OF WHETHER, having more widely discussed these matters, it is permissible to determine: whether, in the case of the Most Eminent Fathers of the House of St. Angel, the collection of alms

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should be permitted.

RESOLUTION. The Sacred Congregation of Bishops and Regulars, in full assembly on March 18, 1881, gave the following response: Affirmative.

FROM THESE, WE GATHER:

I. The privilege granted to the Religious Order by an Apostolic Bull is to be observed, along with the explicit derogation of the rights of other Orders competent in that matter.

II. Therefore, according to the well-known axiom of law, it is not to be considered an injustice to another who makes use of his own privilege in such a way.

III. A stronger privilege is to be maintained, if, as in this case, the reason that led the Pope to grant it persists.

REGARDING THE FACULTY OF HEARING THE CONFESSIONS OF REGULARS: A SUMMARY OF THE FACTS.

Since the question of whether any member of the same Order could validly confess his own sins to an external confessor had been debated for a long time in the Congregation of Missions, this question was finally submitted to the judgment of the Apostolic See by the Superior General. Two opinions were submitted simultaneously, prepared by two brothers of the same Order: one arguing strenuously for an affirmative resolution, the other for a negative resolution.

[*Latin ed. p. 272*]

272. TURIN. However, since the Congregation of Cardinals and Regulars has presented another opinion, we offer this one, because it seems to have touched upon the core of the question more closely, and appears more suitable for the brevity and clarity of our publication.

A SYNOPTIC SUMMARY OF THE CONSULTOR'S OPINION.

From the Bull of Urban VIII, from the Brief of Alexander VIII of September 22, 1655, and from the declaration of Benedict XIII of September 17, 1825, the Consultor states: "It is clear that the Congregation of the Missions was granted full exemption from the jurisdiction of the Ordinaries, with the exception of those matters pertaining to Missions. It is also clear that the Congregation of the Missions received this privilege without any exception."

Therefore, anyone who would deny this fact must, with full proof, demonstrate that the Congregation of the Missions did not receive the privilege of exemption, at least with regard to the jurisdiction of the internal forum; and furthermore, that the renunciation of this privilege was permitted by the Holy See. But no proof has been offered by anyone

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to support these claims.

Indeed, there are positive arguments that prove the acceptance of this privilege, both in the writings of the first Superiors General and in the Rule itself. In the Rule, concerning the Visitor, it is written: "Reg. Visitatoris cap. 2. §. 2 n. 4: 'It is up to him to establish two of our confessors as ordinary confessors in each house... He will also designate external confessors to the Superior General... after obtaining the prior approval of the Ordinaries.'"

From this, it is clear that there is a difference, as established by the Rule, between the institution of confessors for the members of the house of the Missions, carried out by the Visitor, and the approval of the Ordinary, sought for confessors of external persons.

In addition to the facts mentioned above, another fact of a different order must be noted: namely, that the custom has existed within this order whereby its members hold the faculty, granted by the General Chapter, to confess their sins outside of their Congregation. Hence, the difference of opinion between the two Consultors of the Society.

[*Latin ed. p. 273*]

TURIN, 273, ibid.: because one of them adheres to the law in writing, while the other attempts to justify a contrary custom, which he often alleges to his advantage. Having passed from these facts, the Consultor stated: it cannot be doubted that a certain society or Congregation, fully exempt from the jurisdiction of Ordinaries, and directly subject to the Apostolic See, enjoys jurisdiction over all its members in both forums, excluding all diocesan jurisdiction. Furthermore, it is equally certain that, under these circumstances, only the Superiors of the Congregation can delegate the necessary jurisdiction for the absolution of members of the same Congregation. It is also beyond doubt that the Superiors can also suffice with an implicit delegation, or even a tacit one, such as that which arises from custom, tacitly approved by them. Therefore, the Consultor stated, from what we have indicated above, it follows that, in our particular case, no one can have jurisdiction, even in the internal forum, over the members of the Congregation of the Mission, unless they have received it from the Superiors of the same Congregation. Consequently, a member of the aforementioned Congregation cannot validly confess his sins to a priest who has not expressly or implicitly, openly or tacitly, received the power to do so from the Superiors of said Congregation. With these premises, the Most Eminent and Reverend Fathers were asked to clarify the following question: Whether a member of the Congregation of the Mission can, without the permission of the Superior, validly perform sacramental confession with an external priest approved by the Church, while easily having access to a confessor priest, even within the Congregation.

RESOLUTION. The Sacred Congregation of Bishops and Regulars, after deliberation on September 23, 1881, decided to respond: Negatively. Acta,

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Vol. XIV, p. 612.

[*Latin ed. p. 274*]

274. CONCERNING THE TAUFINIAN ORDER. From these [points], it may be gathered that: I. A Religious Order, being exempt from the jurisdiction of Bishops, remains subject in both matters to the immediate jurisdiction of the Most Holy Pontiff. II. The Roman Pontiff, after the Bishops, governs Religious Orders through commissaries or delegates, such as the superiors general, provincials, and local superiors of any Order, who are truly and properly considered as prelates of each approved and exempt religious congregation. III. Since the exemption of Religious Orders is valid for both forums, the superiors of the Order become Ordinaries, to whom alone the right belongs to approve confessors for receiving the sacramental confessions of members of the same Religious Order. IV. Therefore, no confessor, even if approved by a Bishop, can validly receive sacramental confessions from a religious man, unless he has received power to do so from the superiors of that Order. V. Consequently, in the Missionary Congregation, since it is entirely exempt, no member of it, whatever may be the contrary custom, can validly perform a sacramental confession with an external priest, even if the priest has been approved by the Bishop for receiving confessions. VI. Nevertheless, a religious man of this Order can validly confess his sins to an external priest, whenever it is either impossible or very difficult to have the confessor of his Religious Order.

[*Latin ed. p. 275*]

278 FROM CHAPTER 8. A COMPENDIUM OF RITES CONCERNING THE LIFE, VIRTUES, AND MIRACLES, AS WELL AS EVENTS RELATED TO THE CAUSE OF CANONIZATION OF THE BLESSED BENEDICT JOSEPH LABRE (1).

Benedict Joseph Labre was born in the region of Gallia, commonly called Amettcs, within the boundaries of the then-Bolognese, now Arras, diocese; and in the year of the restored faith, 1748, on the feast of the Octave of Saint Joseph, the Spouse of the Virgin Mary, on the seventh day before April, he received the sacred Sacrament of Baptism from his uncle, Joseph Francis, and received the grace of regeneration, which he preserved intact until the very end of his life, and wonderfully increased. His parents, John Baptist Labre and Anne Barbara Grandzir, were far more devoted to the study of religion than to the accumulation of wealth, and they especially strove to instill in their son, Benedict, a love for piety from his earliest years. Benedict fully responded to their care; for even before completing his fifth year, he was already diligently reading the rudiments of Christian doctrine, and he retained them with a tenacious memory. He soon devoted himself to the pursuit of studies, giving them his full attention; for he found all youthful pleasures tiresome, and he made the most of every moment, however small,

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for the cultivation and advancement of his soul. In him shone forth an excellent character, modesty, and especially humility, which, from his earliest years, he cultivated above all other Christian virtues, as a firm foundation for them. He fostered a deep love for the Virgin Mary, so that he decorated her altars with lights and flowers, and he called upon his brothers, of whom he was the eldest, to help him in this task; he sang hymns with them, and by his example, he inspired others to venerate the Virgin. He displayed the same virtues in his dealings with his schoolmates, whom he loved equally; and although he was somewhat slow in his movements, his face was always cheerful.

(1) The decree for the solemn canonization can be found in Volume VII, page 204; the decree in which two miracles are approved for the purpose of canonization is found in Volume VII, page 202; the decree concerning new miracles attributed to the Blessed Joseph Labre is found in Volume III, page 265.

[*Latin ed. p. 276*]

276 A SUMMARY of his life and virtues: cautious in his words, speaking rarely, listening often, so that he gained the goodwill of all. Hence, his teacher readily confessed that he had never found a young man in whom so many and such outstanding examples of virtue shone forth. In the year after completing his tenth year, Benedict was sent to the city commonly called "Er," to his uncle; and there, through the hands of the Bishop of Bononiensis, who was then visiting that city, the blessed young man, with the fervor of spirit with which he had burned for Jesus from his childhood, received the heavenly bread for the first time. He frequently partook of this, by the counsel of his confessor, throughout his entire life, and thus his charity towards God increased daily. There, he diligently devoted himself to studies, and especially applied himself to learning the Latin language, in which he was well versed, and he often and gladly read the sacred Scriptures, easily grasping their meaning with the divine light illuminating him; and thus he retained the sacred words so memorably, that he readily recalled the true meaning even when others presented them inaccurately. Burning with charity for his neighbor, he joyfully went to meet those in need, and he provided them with food and clothing on more than one occasion, and he was so concerned for them that he constantly thought about how to help them. With the same feeling, he was eager for the health of the sick, and he earnestly desired to alleviate their sufferings as if they were his own. It is remarkable with what alacrity, without being deterred by any labor or danger, he assisted those suffering from a contagious disease in the year 1766. For when his uncle, who at that time was serving as pastor in the aforementioned city, having contracted an incurable illness, met a precious death in the sight of the Lord, his nephew, so that the citizens would not feel the absence of their most beloved pastor, devoted himself to everything for

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everyone, and eagerly undertook all the most arduous duties in the public hospitals, where those infected with the plague were received; and thus he earned the name of "Angel." But Benedict, truly understanding how the youthful age is surrounded on all sides by dangers in this world, considered choosing the solitude of a monastery. However, his parents scarcely recognized this purpose of his mind, and they immediately opposed it, because they noticed the young man, lacking in no strength, was entirely necessary for embracing this way of life. But then, so that his pious mother would not resist the divine will, she finally yielded to the wishes of her son. Having obtained permission, he immediately went to the Trappist monks, and eagerly embraced the strict discipline of the Institute. But...

[*Latin ed. p. 277*]

Saint Joseph Labre, 277. The pious young man, with a frail constitution, began to suffer from illnesses, and the Superiors, although reluctant, were forced to dismiss him. However, the servant of God, inflamed with an ever-increasing desire for solitude and austerity, did everything he could to be accepted among the Carthusian monks, and then among the Cistercian monks. But not long after, due to a similar weakness of health, he had to leave both institutions. This, of course, must be considered to have happened not without the divine providence: so that he himself, although living outside the cloister, might lead a life openly marked by illness, suffering from humility and the lack of all things, and thus, by his example, might reproach the pride of life, the lust of the eyes, and the concupiscence of the flesh to the citizens of the world. Therefore, Benedict, more certain of the divine will, having abandoned his homeland and renounced all worldly cares, decided to serve only God, and embraced a completely new way of life, even more rigorous than that of any religious order. Indeed, clothed in worn and tattered garments, girded with a rope, poorly shod, he undertook long journeys on foot to visit the most famous sanctuaries of Europe, enduring the heat of the sun, the cold of winter, hunger, and thirst, and often straying from the right path, wandering through deep valleys and inaccessible mountain ranges, enduring hardships and inconveniences that are scarcely credible. On the eve of September, in the year 1770, Benedict, already a pilgrim in the twenty-second year of his life, having completed a long and arduous journey, arrived at the city of Quieren, commonly called Pedemont, where he wrote his last letters to his parents, in which he bid them a final farewell, and at the same time consoled them, assuring them that, having completed this brief pilgrimage of life, he would embrace them in the joys of eternal blessedness. Immediately afterwards, he set out for the province of Piena, to visit first the temple of Loreto, the most venerated sanctuary in the entire Christian world. Therefore, on the fourteenth day before December, Benedict Joseph, who from his youth had burned with ardent love for the Virgin, entered the sacred dwelling of the Divine Mother,

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where he spent several days, deeply moved by an unspeakable feeling of piety. From there, he went to the sanctuary of Assisi, where he wished to be received among the confreres of the Seraphic Patriarch, called "confratres." This confraternity was endowed with sacred Indulgences by the Supreme Pontiff, Saint Pius V. In order to deserve these indulgences, Benedict Joseph, before receiving the sacred cincture, wished to cleanse his soul through the Sacrament of Penance, and to partake of the holy Eucharist. On the third day before the Kalends of December of the same year, he went to Rome.

[*Latin ed. p. 278*]

278 Having venerated the sacred relics of the Martyrs and, above all, of the Principal Apostles, he remained for three days near the church of St. Louis, in France, in Rome, until the month of May; during the day, he visited the tombs of the Martyrs, going around the sacred buildings of the city, and at night, he stayed near the Amphitheater of the Chains, a remarkable monument of the Christian faith. In the following month of May, he returned to the Shrine of Loreto, stayed in Fabriano, and visited the body of St. Romuald, the founder of Camaldoli, with singular piety. There, the sanctity of St. Benedict shone so brightly that a most pious woman urgently requested him to visit a certain infirm woman. And as soon as she saw the pilgrim, dressed in a tattered garment, with a belt around his waist, entering the house, barefoot, and bearing the image of the Crucifix and a rosary around his neck, although previously her spirit was very distressed, she was miraculously comforted. Then, the Blessed Servant of God spoke to her with gentle words, and she revealed the secrets of her soul, which she could only have understood through the light of the Divine Spirit. After being refreshed with a modest meal, and filled with gratitude for the Divine Spirit, she left behind that well-known written prayer, which begins: "Jesus Christ, King of Glory, comes in peace, etc.," which he foretold would be useful for obtaining Divine mercy; which the people of Fabriano experienced especially during the severe earthquake of the year 1781. To others, also, having visited the shrines along the way, he again approached the shrine of the Mother of God in September of the following year. There, having fulfilled the vows of his piety to Jesus and to His most Holy Mother, he set out towards Naples. In this pilgrimage, he visited with great fervor the tombs of both St. Nicholas in Tolentino and in the Cathedral of Bar. On the Ides of February of the same year, he was in Naples, where he poured out long prayers near the altar of St. Januarius, Bishop. On the sixteenth day before the Kalends of March, he began his journey from Naples to Rome, during which he did not neglect to visit the Monastery of Cassino. Leaving Rome, he set out for Loreto for the third time. Afterwards, the Servant of God experienced various, and not entirely easy, journeys. He always diligently explored the sanctuaries of Tuscany, and he reached the sacred mountain of Auvergne, to which St. Francis of Assisi had a special devotion.

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Then, having left the Italian region, he set out to visit the temples of Spain, which were more famous for their divine worship, first approaching the Cathedral of Santiago de Compostela, and then the Shrine of the Blessed Virgin.

[*Latin ed. p. 279*]

Saint Joseph of Cupertino visited the shrine of Serrati, as well as the renowned cave of Manresa. Returning to Italy, he briefly revisited the shrine of Loreto, and in 1774, he returned to Rome, from which he soon departed, undertaking a long and arduous pilgrimage. Having traversed the regions of Tuscany and Emilia, he also traveled to Germany. And the Swiss people were astonished that the servant of God visited the most famous shrines of his region, among which was the illustrious shrine of the Blessed Virgin Mary of Einsiedeln. However, upon the solemn Jubilee announced by the Supreme Pontiff Pius VI in 1775, he returned to Rome in good time, in order to obtain the sacred Indulgences. In the following year, he returned to the Swiss region, not neglecting to make a visit to the venerable House of Loreto. Finally, after many other pilgrimages, in 1777 he returned to the city, where he remained until his death, although he never failed to visit Loreto each year, and to make other pilgrimages to nearby cities, everywhere leaving behind undeniable traces of his holiness. The blessed Benedict completed so many and such laborious journeys, always wearing the same worn and tattered clothing, enduring both summer and winter: sometimes he would snatch a brief sleep under porticoes, sometimes on the bare ground. And if at times he received alms in the name of poverty and destitution, he readily gave them to others in need. He sustained his hunger with fragments of the hardest bread, with vegetables and cabbages thrown away in the streets, or with the rinds of other fruits, and he could never be persuaded to partake of even a slightly more substantial or wholesome meal. In short, he kept the harsh paths of penance, so that he might truly say the words of the Psalm: "I was clothed in sackcloth, and I humbled my soul in fasting, and my prayer returned into my bosom." Weakened by hunger, afflicted by squalor, if at times he was rejected or mocked, and insults were demanded by a rude rabble, he was never seen to be distressed: indeed, whatever insults or injuries were inflicted upon him, he bore them with joy and cheerfulness. He spent the greater part of the day in the temples, or before the image of the Mother of God, whom he followed with the most tender affection of his heart, remaining kneeling for a long time. And in order to express the feelings of his piety to the Mother of God more fervently, he went daily to the church of Santa Maria ad Montes, and devoutly prayed there; indeed, in his heart he always contemplated that divine saying, which the Church sings of the Virgin: "Blessed is she who watches at my doors daily, and observes the

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posts of my gate."

[*Latin ed. p. 280*]

280 A SUMMARY OF HIS LIFE. No less remarkable was the fervor with which he approached the most august Sacrament of the Eucharist, especially during the solemn Forty Hours devotion: he so frequently practiced this pious exercise that the citizens of Rome called God's servant "il poverello delle Quarant'ore" (the little poor man of the Forty Hours). This piety of Benedict Joseph, which would certainly have been pleasing to God, was also confirmed on several occasions by miracles. For, out of charity, Benedict was received into a hospice, two years before his death, by a certain pious priest who had established the hospice for the reception of the poor. The inhabitants of the same hospice testified that they had seen God's servant sleeping with them in the evening, and that he had never left that place during the night. Moreover, many others asserted, even under oath, that they had seen the same servant of God praying fervently at night in several churches, where the most august Sacrament was exposed for veneration. It is also said that on the night of the Nativity of Our Lord, while he was staying with his companions in a hospice, he was seen to be present at the sacred functions in the church of Santa Maria ad Montes. He frequently approached the Sacrament of Penance, and he received the most divine Body of Christ with such fervor of spirit that it was evident externally. He constantly remembered the sufferings of our Savior and his most abundant charity, from which he drew greater strength to endure all hardships. Hence, he found great devotion in the pious exercise of the Stations of the Cross, which is certainly most fitting for fostering love for the crucified Christ; therefore, he was accustomed to visit the Flavius Amphitheater, where there were erected around the perimeter small chapels depicting the mysteries of the Passion, and he visited them very frequently. Finally, on the sixteenth day before the Kalends of April, on a Thursday of the greater week, in the year 1783, while he had attended the holy Mass Sacrifice in the church of Santa Maria ad Montes, and had spent several hours in prayer, he was seized by a fainting spell; and after being taken to the home of a benefactor, and after having vainly prostrated himself on the ground and been laid down, he was placed in bed, although unwillingly; lacking strength for many hours, and appearing to be almost entirely devoid of spirit, he was anointed with holy oil, and having completed a life of such austerity, he peacefully passed away at approximately the twenty-fifth hour, while the churches of the city were praying for the souls of the departed, having reached almost his thirty-fifth year.

[*Latin ed. p. 281*]

Saint Joseph Labre, 281. When the news of Benedict's death first spread

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throughout the city, an immense crowd immediately surrounded the room where the body of the poor man lay, and each person struggled to obtain a small piece of his clothing as a token of veneration. Indeed, people of all ages, sexes, and stations rushed together to view the deceased Benedict Joseph in the church of Santa Maria ad Montes, and to implore God's intercession in their needs. To this growing sentiment, miracles were also added, by which God deigned to honor the memory of His humble servant. Furthermore, it is clear to all that the heroic practice of all Christian virtues shone forth from the ardent zeal with which the servant of God strove to conform his life to the examples of the Divine Master. For, the Faith and Hope which are evident in his works are abundantly demonstrated by the countless and arduous pilgrimages he undertook in honor of God, the Blessed Virgin Mary, and the Saints, from the beginning of his life until his death, for which he endured so much. Charity, both towards God, which was especially evident in his constant prayers, and towards his neighbors, for whom he repeatedly exposed himself to the greatest dangers, shone forth marvelously. Prudence, as Saint Bernard teaches, the guide and director of all virtues, governed his entire life, since he recognized no other goal than the glory of God and eternal salvation. It is evident that Blessed Benedict was a follower of Justice, because he gave greater honor and worship to God than he could, and he was so concerned for the good of his neighbor that he showed remarkable generosity to the poor, even though he himself was often in need. Temperance was evident in him because of the harsh way of life he embraced, and he always wished to afflict his body with vigils, fasts, and scourges; and also Fortitude, by which, having abandoned his home, his parents, and his homeland, he determined to observe God's commandments alone. Finally, humility constantly exercised, illuminated all his actions, which increased daily because of the intense desire he had to follow the footsteps of Jesus for our salvation, and to accept the form of a servant. Just as the man who, through pride and the allurements of the senses, had fallen from his original innocence and happiness was translated from death to life through humility and the martyrdom of the Cross, so too, Benedict, having embraced the most rigorous path of perfection, was nourished by evangelical teachings, so that he might, through the Cross,

[*Latin ed. p. 282*]

282 The life was marked by mortification of the flesh, so that the spirit might be elevated to heavenly delights. Therefore, it happened that in the month of May of the same year in which the Servant of God, Benedict, rested in the Lord, the Most Reverend Cardinal Colonna of Rome, with the urgent request of Father Caietano Palma, a priest of the Congregation of the Religious Workers of the Holy Church of Santa Maria ad Montes, Rector and legitimately appointed Postulator of this cause, instituted an informative process concerning the life and virtues and miracles of the

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Servant of God, and also concerning his obedience to Pope Urban VIII. This was likewise carried out in the ecclesiastical courts of Lauretana and Bologna, and also in the Abbey of the Seven Fountains by delegation of the Bishop of Autun, after which, upon mature examination and judgment completed, and after its presentation in Rome, the matter was brought before the Congregation of His Holiness, according to legitimate rites, for consideration; and in that congregation, the question of introducing the cause of the Servant of God for his beatification and canonization was first raised, at the urging of the aforementioned Postulator. Regarding this, the Most Reverend and Most Illustrious Cardinal Archpriest, Prefect of the Sacred Congregation of Rites, and Relator of the cause, when all were in agreement, Pope Pius VI, on the eve of the Kalends of April, 1792, signed with his own hand a commission for the introduction of the cause of the venerable Servant of God, Benedict Joseph Labre. Then, when a doubt had been proposed concerning the cult not exhibited to the Servant of God in the aforementioned Sacred Congregation of Rites, the same Supreme Pontiff, Pius VI, confirmed his favorable opinion on the third of the Kalends of February, 1793. Thus, happily, all things were carried out according to the law and custom to be observed, according to the discipline of the sacred forum, concerning the writings of the Venerable Servant, and also concerning the validity of all the processes, constructed by ordinary and apostolic authority. On the ninth of the Kalends of December, at the request of Father Philip Maria Colonna, a priest, Rector of the pious House of Catechumens, and one of the Postulators of the cause of the Venerable Servant of God, Pope Pius VII, upon the report of the Secretary of the Sacred Congregation of Rites, granted permission to propose a doubt concerning the heroic virtues of the Venerable Servant of God, Benedict Joseph Labre, even though the term of fifty years, to be counted from his death, prescribed by law, had not yet been completed. Hence, in the year 1828, on the thirteenth of the Kalends of December, in the offices of the late Cardinal de Somalia, then Prefect of the Sacred Congregation of Rites and Relator of the cause itself, preparatory meetings of the Congregation concerning the heroic nature of the virtues were held.

[*Latin ed. p. 283*]

Saint Joseph Labre 283: To the Venerable Benedict Joseph Labre, greetings: Then, in other preparatory meetings, in the Vatican Apostolic Palace, and finally, in the general meetings held on the third of the Nones of August in the year 1841, in the Apostolic Palace on the Quirinal, in the presence of His Holiness Pope Gregory XVI, in which, while the Eminent and Illustrious Cardinals, entrusted with safeguarding the sacred rites, and also the Reverend Fathers Consultors, unanimously affirmed with a positive vote the outstanding virtues of the Servant of God, on the first of June of the following year, 1842, the Supreme Pontiff, by a solemn decree, pronounced

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the heroic virtues of the Venerable Servant of God. Thus, after a successful examination concerning the heroic virtues of the Venerable Servant of God, the process was begun to determine the judgment regarding his Beatification, and therefore, concerning the alleged miracles. Although, of the many things attributed as miracles that occurred with the intercession of the Venerable Benedict Joseph, only two, by law, were required for proof to obtain Beatification. However, in order to present a more lucid and splendid addition to the divine testimony, it was decided that three should be submitted to the examination of the Congregation of Sacred Rites. And of these, the first took place on the fourth of the Ides of January in the year 1852, in the Preliminary Meeting held with His Eminence Cardinal Constantine Patrizi, Bishop of Albano Laziale, Prefect of the Congregation of Rites, and Relator of the Cause; then, in the Preparatory Meeting convened in the Vatican buildings, on the seventeenth of the Calends of October, 1857; and finally, in the General Meetings held there before His Holiness Pope Pius IX, on the Ides of March of the year 1859, in which the praised Cardinal, Relator of the Cause, proposed the question: "Concerning which miracles does it appear to be the case, and to what effect do they pertain?" The Eminent Cardinals present and the Reverend Consultors each gave their vote. And likewise, the Supreme Pontiff, in the patriarchal Basilica of the Lateran, on the solemn day of the Ascension of the Lord in the year 1859, pronounced the final and definitive judgment, and solemnly defined: "That three miracles are established; namely, the first, in the second class: the instantaneous and perfect healing of Mary Rose of Lucca from pulmonary phthisis; the second, in the third class: the instantaneous and perfect healing of Theresa Tartufoli from an old, sinuous, fistulous, and calloused ulcer; and the third, in the second class: the instantaneous and perfect healing of Angela Joseph of Martin from a grave, lithic obstruction of the spleen, severely symptomatic, and filled with other diseases."

[*Latin ed. p. 284*]

284 COMPENDIUM VITAE. These three miracles, having been sanctioned by a Pontifical Decree, were again presented in the General Congregation of Sacred Rites on the fourth of June, in the year 1859, before Pope Pius IX, in the Vatican buildings, when the Most Reverend Cardinal Patrizi, Prefect of the Congregation of Rites and Relator of the Cause, proposed the question: "Given the approval of the virtues and of these three miracles, can we proceed safely towards the Beatification of the Venerable Servant of God?" The response, given by all present, was affirmative. With this prospect, the aforementioned Pontiff, on the eighteenth day before September, that is, on the feast of the Assumption of the Blessed Virgin Mary of the same year, solemnly declared and pronounced his supreme and definitive judgment in the Patriarchal Basilica Liberiana, stating that "It is safe to proceed towards the Solemn

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Beatification of the Venerable Servant of God, Benedict Joseph Labre." Therefore, on the tenth day before June, that is, on the Sunday within the Octave of the Ascension of our Lord Jesus Christ, the ceremonies of Beatification were celebrated in the Vatican Basilica, and the image of the Blessed Benedict Joseph Labre, having had its covering removed, appeared surrounded by celestial splendors, and new marvels were wrought by God, so that it might be more clearly evident to men, who, having set aside heavenly treasures, exert all their efforts to acquire the deceptive riches and pleasures of the world, considering them as their sole end, how great the height of glory attained in heaven by the poor Servant of God and humble man. Of these marvels, two were selected as the most outstanding, and were presented to the judgment of the Sacred Congregation of Rites. Hence, marked by the Most Holy Pope Pius IX, Apostolic Processes were immediately instituted concerning these same miracles. The miracles were as follows: A woman named Theresia Massetti, a native of Rome, afflicted with a weak constitution and a lymphatic temperament, suffered from numerous illnesses during her life, some of which clearly indicated a vicious blood disorder. In the year 1859, having already completed her forty-third year, she felt a pain in her breasts so intense that it extended to her back. The most skilled physicians were immediately called, and they quickly determined that the matter had progressed to the stage of hidden cancer, and that the only hope of salvation lay in excision; therefore, they removed the right breast, which showed the greater presence of the disease. However, the insidious cancer attacked the other breast, and within the space of one year, it gained so much strength that it became worse than the other. The physicians testified that a second operation would not be a remedy, but rather an empty torment; therefore, death was inevitably imminent.

[*Latin ed. p. 285*]

Saint Joseph of Cupertino was invoked. Because a pious woman, having no further hope of regaining her health through human help and science, turned her spirit and prayers to Blessed Benedict Joseph of Cupertino, whose solemn beatification was soon to take place. And so, on the most auspicious day of May 26, 1860, she arrived at the Basilica of the Vatican in a carriage with her family: and as the sacred ceremonies were being celebrated, she earnestly implored the heavenly patron. Almost deprived of her senses, she did not even notice the presence of the image of the Blessed Man, but, prompted by a young girl accompanying her, she began to gaze at it with fixed eyes: and as she remained fixed in that gaze, no further pain afflicted her; she then took the sick woman's hand; and that which she had previously not been able to bear even the touch of a feather, now felt no discomfort under the pressure. With renewed strength, and standing upright, rejoicing, she returned home, completely cured of the

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cancer, which, once cast out by divine power, dared not return.

II. Sister Mary Aloysia of the Immaculate Conception, a nun of the Visitation of the Blessed Virgin, in the monastery of the Divine Love of Monte Falisci, suffered for many years of her life from a severe stomach ailment, so that she constantly experienced anxiety, anorexia, and vomiting. But in the year 1860, the pain in her stomach worsened, and the vomiting became more frequent. Therefore, the infirm woman, although reluctant, was forced to lie in bed; and, despite being subjected to the care of very skilled physicians, the illness continued to worsen. To this was added a sharp pain in the thigh and right arm, as well as a livid discoloration in the region of the stomach, which became increasingly dark day by day, and the loss of blood, partly liquid and partly congealed, through vomiting. Consequently, with the digestive functions completely disturbed, anorexia increased; a burning fever and thirst tormented her; and, as her strength gradually failed, she was consumed by weakness, and coughs and fainting spells afflicted her. After all remedies had been tried in vain, the physician asserted with certainty that the infirm woman was suffering from scrofula or some other very serious ailment. Seeing that Sister Aloysia was suffering beyond measure, her friend was advised to ask for the help of Blessed Benedict Joseph of Cupertino, whose image was hanging on the wall. But at first, she was so impatient with grief that she showed no faith in him; but later, the thought occurred to her that the suffering of her mind was due to the distrust shown by her friend, and she humbly and confidently commended herself to the Blessed Man, and shortly afterwards fell into a light sleep. Then, in her sleep, she saw herself gazing at the image, with a face radiant with joy, and surrounded by a brilliant aura of a certain venerable young man.

[*Latin ed. p. 286*]

286 A summary of the life of the one claiming to be Benedict Joseph; who blessed the forehead, stomach, and abdomen of Aloisia with the sign of the Cross, and finally, enveloped in a brilliant cloud among the Angels, he was raised to the heavens. The woman, having awakened, was speechless, but immediately, by sight and touch, she discovered that all signs of the illness had completely vanished. She rose from her bed, dressed, and went to the refectory, where the sisters were gathered; and, reclining at the table with them, she partook freely of the food with which the other sisters were eating. Afterwards, the pious nun behaved as if she had never suffered from any illness. First, an examination was conducted in the Antepreparatory Convent by the same Cardinal Patrizi, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation of Rites, and Relator of the Cause, on the ninth day before June, in the year 1870. Then, a second examination was held in the Preparatory Assembly, gathered in the buildings of the Vatican, on the ninth day before May, in the year 1872. Finally, a third

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examination was held in the General Assembly, gathered in the same Vatican buildings, before His Holiness Pope Pius IX, on the thirteenth day before December of the same year; in which the aforementioned Cardinal proposed the question: "Whether, and concerning which miracles, it is established in this case and to what effect." All, both the esteemed Cardinals and the Consultor Fathers, unanimously expressed their opinion. Having heard these things, the Supreme Pontiff, Pius IX, encouraged each of them individually to implore the help of God in this matter of such importance, before he would give his judgment. Therefore, on the feast of Saint Thomas of Canterbury, Archbishop, namely, on the fourth day before January, of the same passing year, after a most pious offering of the sacrificial host, proceeding solemnly into the more noble hall of the Vatican Palace, he declared: "It is established that there are two miracles of the second class, namely, the first: the instantaneous and perfect healing of Theresia Musetti from a cancerous ulcer in the left breast; and the second: the instantaneous and perfect healing of Maria Aloisia, a professed nun of the Immaculate Conception, in the Venerable Monastery of the Divine Love at Monte Falisci, from a cancerous ulcer of the stomach." Therefore, nothing more was needed, in order that this most illustrious cause might proceed to its conclusion for canonization, except that the question be proposed in the same Sacred Congregation of Rites: "Whether, with the approval of the two miracles after the granting of the permission by the Apostolic See for veneration, it is possible to proceed safely to the solemn canonization of the Blessed Benedict Joseph Labre?" And so, the aforementioned Cardinal, Relator of the Cause, enunciated this question in the General Assembly.

[*Latin ed. p. 287*]

287 Saint Joseph of the Sacred Heart, at the General Councils held before His Holiness Pope Pius IX in the Apostolic Palace at the Vatican on the nineteenth day before the Kalends of February in the year 1873, unanimously and affirmatively approved the matter by both the Cardinals and the Consultor Fathers. And on the fifth of the Ides of February of the same year, the Pontiff chose the Sunday of Septuagesima to pronounce his definitive judgment: therefore, he decreed: "That the solemn canonization of the Blessed Joseph of the Sacred Heart may proceed." On the second day of the week, December 5, 1881, the Sacred Congregation of the Most Eminent and Most Reverend Cardinals of the Holy Roman Church, appointed by His Holiness Pope Leo XIII and the Apostolic See to oversee the Index of books containing pernicious doctrine, and to determine their condemnation, suppression, expurgation, or permission throughout the Christian Republic, held in the Apostolic Palace at the Vatican on December 18, 1881, and condemned, and condemns, and ordered that the following works be referred to the Index of Prohibited Books, or are otherwise condemned and proscribed:

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DIE THOMAS — Encyclical of Leo XIII, dated August 4, 1879. A lecture delivered in Bonn on February 14, 1880, by Professor Dr. Peter Knoodt. Bonn, 1880. In Latin: *Oratio, quam Professor Dr. Petrus Knoodt die 14 Februarii 1880 circa Encyclicam Thomisticam Leonis XIII die 4 Augusti 1879, Bonnae habuit.* Bonn, 1880.

ANTON GUNTHER. A Biography by Peter Knoodt. In Latin: *Vita Antonii Günther.* By Peter Knoodt. Volume 2. Vienna, 1881.

SICILIANI PIETRO, Professor of Philosophy and in charge of the pedagogical course at the University of Bologna. On religious instruction for children according to the dictates of scientific philosophy. Fourth edition, revised and enlarged. Bologna, Nicola Zanichelli, bookseller-publisher-printer, 1881.

[*Latin ed. p. 288*]

288 DECRETUM – Science in Education. Second edition entirely revised, enlarged, and with a portrait of the author. Bologna, Nicola Zanichelli, bookseller-publisher-printer, 1881. Religion and extreme parties. Studies by Candido Arasieve. One volume. Lech, at the publisher Gr. Spacciante, 1881. Author (Bombelli Rocco), of the works entitled: The Infallibility of the Roman Pontiff and the Vatican Ecumenical Council, a dialogue between a theologian and a rationalist. Milan, 1872. – Critical History of the Origin and Development of the Temporal Power of the Popes, written on original and authentic documents. Rome, 1877, prohibited. Decree of July 12, 1877, before his death, he commendably submitted himself and approved the works. On the aforementioned days and months, the following questions were proposed: I. Whether books presented to the Congregation of the Index and dismissed or not prohibited by the same, ought to be considered immune from all error, against faith and morals. II. And, to the extent that the answer is negative, whether books dismissed or not prohibited by the Holy Congregation of the Index, can, without presumption, be challenged, both philosophically and theologically. The same Holy Congregation responded: To I. Negatively. To II. Affirmatively. Therefore, no one of any rank or condition, should dare to publish or, having published, to read or retain the aforementioned works, in any place, and in any language, but rather he is obligated to deliver them to the Ordinary of the place, or to Inquisitors of heretical perversity, under the penalties indicated in the Index of prohibited books. These matters, having been related to the MOST HOLY LORD OUR POPE LEO XIII by me, the undersigned S. I. C. from the Secret Archives, HIS HOLINESS approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome on December 28, 1881. F. R. THOMAS M\ CARD. MARTINELLI, Prefect. Fr. Hieronymus Pius Saccheri, Order of the Preachers, in place of the seal. S. Index Congregation, from the Secret Archives. On December 30, 1881, I, the undersigned, witness that the aforementioned Decrees were read and published in the

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City. Vincentius Benaglia, Magister Cursus.

[*Latin ed. p. 289*]

289 Letters indicating that the beginnings of dissension must be suppressed opportunely and promptly, which are fueled by certain ephemeral publications and the teachings of a philosopher among the more recent ones.

TO THE VENERABLE BROTHERS, ARCHBISHOPS AND BISHOPS OF THE ECCLESIASTICAL PROVINCES OF MILAN, TURIN, AND VERCELLI.

LEO XIII

Venerable Brothers, Greetings and Apostolic Benediction.

It is known to Us your wisdom and diligence in every matter; and also your outstanding devotion to this Apostolic See, which you have demonstrated both frequently in the past and, as in the preceding year, with most affectionate letters. And We are greatly pleased that, with God's help, the episcopal labors of your Lordships are bearing abundant fruit. For these matters, We congratulate each of you, and We gladly bestow public praise upon you.

However, there are certain things in these very provinces, Venerable Brothers, concerning which We are not entirely free from concern. For there are apparent in them certain beginnings of dissension, which, unless they are suppressed opportunely and promptly, seem likely to develop into a greater evil. Therefore, We wish that these matters be carefully considered by you, and that you provide for them with your care and effort, so that, with the causes of discord removed, the harmony of opinions and wills may be maintained, which, in every republic, and especially in the Church, is the greatest and best bond of security.

Indeed, it is to be feared that this harmony of minds may be disturbed by the opposing efforts of certain parties, which are fueled by certain ephemeral publications among the inhabitants of the region, and by the teachings of one man, whose name has become prominent among the more recent philosophers.

[*Latin ed. p. 290*]

290. Letters, whose authors defend true and sound principles, the most sacred laws of the Church, and vigorously defend the authority of the Apostolic See and the Roman Pontiff. This type of writing should be especially encouraged, and every effort should be made to ensure that such writers not only flourish in their studies and receive the favor of men, but also find many like-minded individuals everywhere, who will withstand the daily attacks of the wicked, and who will defend the

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cause of honesty and religion, redeeming from impunity the license that many have in writing. For this reason, We have repeatedly praised their intentions, and have strongly urged them to persevere in defending justice and truth in their writings, and to allow nothing to deter them from their purpose. However, in a serious and noble cause, a defense equally noble and serious must be employed, and one should not go beyond what is necessary. It is certainly admirable that those who defend the Catholic name in their writings demonstrate a steadfast love of truth, and are not at all timid; but at the same time, they must undertake nothing that would rightly displease any good man, nor should they, in any way, abandon moderation, which should be the companion of all virtues. In this, no wise person would approve of excessive vehemence in writing, or of anything that might be considered suspicious, or that appears to depart rashly from the due deference and consideration for others. Above all, it is essential that Catholic writers hold the name of Bishops in high regard; those who are placed in the highest degree of authority should be treated with the honor due to them and to their office. They should not consider it permissible for private individuals to question matters that the sacred Pastors have decreed according to their authority; for this would certainly lead to great disruption of order and unacceptable confusion. And this respect, which no one is permitted to disregard, must be especially evident in Catholic authors of periodicals, and should be presented as an example for all to follow. For periodicals, which are intended to be widely disseminated, come daily into the hands of everyone, and can have a considerable influence on the opinions and morals of the multitude. Regarding the other matter, we have already declared which philosophical disciplines we believe should be followed. Our Encyclical Letters, dated August 4, 1879, addressed to all Bishops, clearly state that We desire that the youth be instructed in the discipline of Saint Thomas Aquinas; which has always been very effective in cultivating the minds of men wisely, and is best suited to refute the erroneous opinions that mislead so many people today.

[*Latin ed. p. 291*]

LETTERS 291, to the detriment of their own souls and of the common good. The purpose of Our Letters could easily maintain the unity of all minds, provided that excessive subtleties of interpretation are avoided, and that the principle of moderation is observed in those matters concerning which learned men on both sides have customarily discussed, without jeopardizing faith and charity. But since We see, with concern, that the zeal of certain parties has flared up excessively in their discussions, it is of public interest that some restraint be imposed on this fervor. Therefore, since in the daily publications there is a great need for both extensive commentary and a calm and peaceful judgment, We hope that Catholic journalists will

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abstain from treating such questions.

Meanwhile, the Apostolic See, mindful of its own duty, especially concerning the more serious matters that relate to the soundness of doctrine, does not fail to turn its vigilance and providence to the renewed and growing controversies; and it employs the prudence of counsel, in which every Catholic man ought to find repose. However, We do not wish that this should cause harm to the society of religious men called "Caritas," which, as it has hitherto usefully undertaken its labors in assisting those in need according to its institute, so We hope that it will continue to flourish in the future, and that it will continue to produce more abundant fruits daily. It is now your task, Venerable Brothers, to strive to carry out these Our intentions, and to omit nothing that pertains to strengthening concord. This, as you well understand, is all the more necessary, since more and more fierce enemies of Catholic affairs appear to be threatening. Against whom it is necessary to exercise all our forces, and to increase those forces not through dissipation, but through unity. Therefore, trusting greatly in your prudence, virtue, and authority, We bestow upon you all, Venerable Brothers, and upon the people entrusted to your care, Our Apostolic Blessing, as a pledge of divine favors and of Our supreme benevolence, imparted wholeheartedly in the Lord.

Given at Rome, near St. Peter, on this twenty-fifth day of January, in the year 1882, in the fourth year of Our Pontificate.

LEO XIII.

[*Latin ed. p. 292*]

292 FROM THE HOLY CONGREGATION OF THE COUNCIL – REGARDING REINTEGRATION INTO THE PARISH. Dated September [year obscured], 1880. SUMMARY OF THE CASE. The parish priest C., of the diocese of P., was removed from his office due to his avarice, harshness, and his manner of acting, not only towards the people entrusted to him, but also due to his aversion to civil authority. The Most Reverend Ordinary spared no effort, whether through exhortation or reprimand, to encourage this parish priest to return to a virtuous life and the path of charity. But when all these efforts proved fruitless, on May 6, 1878, he issued the following decree: "For reasons which justly move us, and concerning which we must only render account to God, by virtue of the authority granted to us by the Holy Council of Trent, Session 14, chapter 1, concerning reform, and after careful consideration, we have judged it necessary to suspend you from your office as parish priest, as we hereby suspend you... until our decision... Furthermore, we command you to appear before Our Reverend Pro-Vicar General for Spiritual Affairs within eight days from the receipt of this document, and to discuss with

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him the matter of a salary to be paid to another priest, whom We will appoint to take charge of the spiritual care of the aforementioned parish..." Stung by the severity of this decree, the parish priest, having offered his supplications to the Most Reverend Prince, on January 28, 1879, stated that for fourteen years he had diligently devoted himself to the education of the seminarians, to preaching the Word of God, and to administering the sacrament of penance, and that for all these labors, in...

[*Latin ed. p. 293*]

REINTEGRATION INTO THE PARISH 293 The Church of God, having been exiled, was, in the year 1870, promoted by its own Ordinary to the position of Archpriest of the aforementioned place. For eight years, the parish had been governed by a secular priest, when he was subjected to a very severe penalty, following minor accusations from certain malicious parishioners. Therefore, he vehemently demanded that, after the declaration of the nullity of the decree, he be reinstated into his own parish. Having been requested to provide information and a vote, and to report on the causes of the suspension, the Bishop reported that, as soon as the parish priest assumed his pastoral duties, complaints began to arise from both the people and civil authorities. The nature of these complaints revealed a harsh hatred of the people towards their pastor. He was also accused of neglecting his own duties and the dignity of the Church, of not helping the poor, and of having allowed several sick people to die without the sacraments, in order to acquire money, which seemed to be the primary object of his life. For whatever he did, in word and deed, served only his avarice. In this way, his ministry was rightly despised, and his return to the parish was opposed by almost everyone. The persistent desire to satisfy the desires and wishes of many aroused in him a great displeasure. Alas, a gentle and good pastor!

SYNOPTIC DISCUSSION

DEFENSE OF THE PARISH PRIEST.

Above all, it seems to be the case, from the perspective of the parish priest, that the decree of removal, or suspension from the office of parish priest, is vitiated by nullity, since the Bishop has arrogated to himself a power greater than that which that chapter actually grants. For by that chapter, it is granted to Bishops only the power to: 1° to prohibit the advancement to the sacred orders for any reason, even for a hidden crime, in any way, even extrajudicially; 2° to suspend from orders, or from ecclesiastical degrees, or dignities, as the common interpreters of the canons teach, Fagnanus in cap. Ad aures, de Temp. ordin. n. 12 et seq. and Gonzalez in

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Decretalibus, o.

[*Latin ed. p. 294*]

294. Concerning REINTEGRATION INTO THE PARISH, book 1, title 11, chapter, section 15, Pope Benedict XIV, *De Synodo Dioecesibus*, book 12, chapter 8, section 3; Van-Espen, *De Censuris*, chapter 10. The power granted to Bishops by that chapter does not extend, even by interpretation, because, when dealing with penal law, everyone knows that it must be strictly interpreted. However, the Bishop did not inflict a suspension from the orders upon the Parish Priest, but rather a suspension from his pastoral office. Therefore, since he applied that chapter contrary to the clear disposition of the Fathers of Trent, the decree appears to be unsustainable. Furthermore, the Parish Priest complains that the judgment was pronounced not for hidden crimes, but openly, based on information received by his own conscience. Whatever the authors may dispute concerning the publicity or notoriety of a crime, no one can deny this in fact, who knows that the Parish Priest was warned twice, by order of the Bishop, and although the decree asserts that he is suspended for reasons which move us greatly, and for which we must render account only to God, nevertheless, no hidden crime was produced in the information. The loss of public esteem, which is culpably provoked by hatred of the people, the Prelate alleges, is the reason for which he declares the Parish Priest unworthy to be entrusted with the care of the parish in the future. Therefore, nothing is lacking which is properly required for the publicity and notoriety of the crime. However, in order for the Bishops to proceed according to chapter 1, session 14, concerning reforms, it is necessary that the crime be hidden. The common opinion of the Canonists, to which this Sacred Congregation has adhered up to now, understands the term "occultum" in that chapter to refer only to hidden crimes. Thus, Barbosa, *In Ius Canonicum*, book 1, chapter "Ad aures," section 4; Pirhing, *In Ius Canonicum*, volume 1, treatise 11, section 1, section 15; Pignat, volume 1, *Consultationes*, 261, section 1; Monacell, *Formulæ*, volume 1, title 13, formula 3, section 29; Gaudentius, *De Ianua, De Visitatione Praelatorum*, volume 1, doubts, section 5, section 6, section 39; Pope Benedict XIV, *De Synodo Dioecesibus*, book 12, chapter 8, section 3; where, speaking of this power granted to the Bishops, he clearly states that it pertains to hidden crimes. And this is so true that even the reason for the suspension, or the offense, is not given to the accused.

[*Latin ed. p. 295*]

Regarding the reinstatement in the parish: Bishops are to be held accountable, but only to the Apostolic See, if those suspended have recourse to it; and this is appropriately confirmed by the resolutions of the Sacred Congregation. Among the more recent pronouncements that adhere to this doctrine, we find in the work of the Reverend Lucidi, *De Visit. S. S. L. L.*,

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part 1, sections III, and in the Benedictine Instruction, section VIII, number 273, where it is warned that Bishops should be careful not to, with a false intention, deem a suspension valid, when something is already public and notorious, as if it were hidden. Such a decree is by no means valid, as was demonstrated in the case of *S. Agathae*, concerning the suspension of irregular and private benefices, of February 26, 1853, which had the following form: The Bishop had, with informed conscience, suspended the Archpriest D'Ambrosio from the dignity of Archpriest, from the care of souls, and from the exercise of the sacred orders, without any determination of time. The validity of this sentence was challenged by D'Ambrosio on two grounds: 1) that the offense for which he had been punished was public; 2) that the punishment was indefinite in time. The question posed was: "Does a suspension hold validity in this case?" The response was: "No, saving the right of the Bishop to proceed according to law." Therefore, the sentence was declared invalid, not because there were no reasons for which D'Ambrosio could be punished, but because the Bishop had used the means of punishment which, according to law, did not belong to him. It did not belong to him to proceed with informed conscience because of a reason presented by the accused, since the crime was public. And therefore, the right to proceed according to law, that is, with the proper legal process, was reserved to him. Furthermore, the decree may be deemed invalid on another ground, namely, the lack of a legitimate cause. For, given the inviolability of the parish priest, neither a temporary restriction nor a total deprivation can be imposed unless the accused is proven to have committed a very serious crime, fully and completely. And it is worth noting, for the greatest honor of the parish priest, that there was no one who could oppose anything to his integrity of life. Indeed, three neighboring parish priests, from whom the Bishop requested information and a vote on this matter, spoke with one voice.

[*Latin ed. p. 296*]

296 FOR THE REINTEGRATION INTO THE PARISH, they declare that the account of his life, concerning morals and faith, is not to be found blameworthy. The Bishop also inquires about the aversion of the people and the civil authority towards the parish priest, but upon closer examination, it appears that the cause of the aversion in the people does not consist in any actual fault. For if one removes the clamor of a few, the Syndic and the Prefect of the Province, and others, did not even utter a word against the parish priest. Concerning the other accusations, it should be noted that they pertain only to a certain negligence in the performance of parochial duties, and indeed, not a "grave" negligence, which could reasonably move the Bishop to resort to such an extreme remedy. Furthermore, it should be noted that the parish priest has endured a very severe punishment of suspension for more than two years; therefore, even if some other serious

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fault existed, he seems to have expiated it during this entire time, and to deserve reintegration into the parish. For the principles of reason and equity suggest that the punishment should be commensurate with the fault, and imposed only for the fault itself; this applies even to suspension and interdiction: *Benedict XIV, De Synodo Diocesana, lib. X, cap. I, n. 2 et 3*.

DEFENSE OF THE BISHOP. But, on the other hand, several arguments suggest that the decree of suspension, issued by the Bishop against the parish priest with informed conscience, is indeed valid. Indeed, the Fathers of Trent (Tridentini) seem to speak generally in Chapter 1 of Session 14, granting the Bishops the broadest power to inflict suspension based on informed conscience, both from the orders and from the office. Certainly, the care of souls seems to be among the ranks or dignities ecclesiastical from which the Bishops are granted full power to suspend clerics. Hence, Ferraris, in his Ecclesiastical Universal Library (Bibliotheca Ecclesiastica Universalis), under the word "Suspension" (Susp.), art. 1, no. 19, states: "Moreover, some believe that the Bishop can suspend from office based on informed conscience; and this is because when it is a question of suspension from the exercise of the order received, it seems to be a suspension from the office as well, as those words indicate: 'or who has been suspended from his orders, or ranks, or ecclesiastical dignities.'"

[*Latin ed. p. 297*]

REINTEGRATION INTO THE PARISH 297 Nor does anything stand in the way of the Bishop's decree, since the crimes for which the parish priest is accused are notorious and public, and therefore should be investigated by the proper judicial authorities, and not restrained by extraordinary means. I say that this difficulty does not seem to be of such magnitude as to be able to undermine the aforementioned decree. For, in the first place, not all authorities agree on which offenses should truly be considered public; and secondly, it seems impossible that all things should be so widely known that not even one thing remains hidden. However, even if only one crime remains hidden, it would be sufficient to impose a suspension, or a penalty, or a censure, based on informed conscience. In *Pignatelli, vol. 9, cons. 5, no. 5*, it is stated: "To the extent that the censure imposed pertains to several offenses, it is not maintained for each of them individually; nevertheless, it is sufficient that it be proven based on only one of them, since each one is sufficient to justify it." Furthermore, although canonists commonly teach that a judgment based on informed conscience can only be made in cases of hidden crimes, this opinion does not seem to lack probability, since the Council of Trent granted bishops the faculty to proceed in this manner extrajudicially for any reason, even for a hidden crime. By saying "even for a hidden crime," it seems to include even a public crime. It cannot be denied that the parish priest of Asperen, through his uncivil, imprudent conduct, and excessive greed for profit, so aroused

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the feelings of the civil authorities and the parishioners, and so incited their indignation and hatred towards him, that they repeatedly and vehemently demanded his removal. For all agree that there is no other way to ensure the peace and salvation of souls in this parish, except by removing the parish priest. Therefore, given these circumstances, it seems that the Bishop acted wisely in using all means at his disposal to persuade the parish priest to leave his parish. Since the salvation of souls is the supreme law in the Church, and the Bishop must direct his care and his thoughts towards this end, he did not forget his duty when he rightly appointed the parish priest as an economist, or as a curate, or as a vicar.

[*Latin ed. p. 298*]

298 CONCERNING REINTEGRATION INTO THE PARISH: Regarding the administration of the parish, the following is established. Whenever a pastor, for a serious reason, is no longer able to effectively care for the souls entrusted to him, according to chapter 10 concerning the renunciation [of office], and the sanction of Trent [Tridentini] in chapter 6, session 21, concerning reform, this remedy should be considered for the good of the souls. The method for determining this matter was left to the judgment of the Most Reverend and Reverend Fathers [B. E. P. P.], and their wisdom has been revealed in the following questions. I. Whether the decree of May 6, 1878, is applicable in this case. And, to the extent that it is negative, II. Whether and how provision should be made in this case. RESOLUTION. After mature deliberation on September 11, 1880, the Sacred Congregation decided to respond as follows: To I. Negatively. (1) To II. Affirmatively, and unless the pastor wishes to renounce [his office], the Bishop should proceed to the deposition [privation] of the pastor, according to the law. In the meantime, the pastor is permitted to return to the parish. (1) For the procedures to be followed, see the notes, which we have included at the end of the following Appendix III. However, it should be noted that the Sacred Congregation declared that the decree in question, issued based on informed conscience, is not applicable, because no hidden fault was found for which a penalty could be imposed. This, it seems to us, is evident from the very response of the same Sacred Congregation to the second question, in which it orders the Ordinary to proceed to the deposition of the pastor, according to the law, unless the pastor refuses to renounce [his office]. And therefore, it does not admit the judicial form that followed from the Bishop in this case. Furthermore, the case of the Appeal, related in Volume VII, page 559, should be recalled, so that it may be more evident that this extrajudicial form should be used because of a hidden fault.

[*Latin ed. p. 299*]

299 APPENDIX III. CONCERNING THE SUSPENSION RESULTING FROM INFORMED CONSCIENCE. We have long felt the desire to offer

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our readers some guidance, to be kept in mind when applying the difficult procedure of suspension, which is now called "resulting from informed conscience." We have often observed that this form of judgment is not applied according to the mind of Trent, from which it derives its origin. Therefore, it frequently happens that the Congregation of the Holy Council, interpreter and defender of Trent, must declare that certain decrees of Bishops are not sustainable, should such a case be brought to the attention of the Apostolic See. Then the one who appeals, even if perhaps overwhelmed by vices, elevated by pride due to a perceived victory, pursues the sacred authority of the Prelate with all his might, believing that he can, through this form of speech, conceal his own disgrace and recover his lost dignity. We have observed all of this with great sorrow, for we confess that the authority of the Holy Fathers is entirely venerable to us. Therefore, in order that this may happen less frequently, and that such authority may more easily be preserved in its integrity and dignity, we have considered it useful to refer to the question discussed in the Holy Congregation on April 8, 1848. Indeed, it is evident in this discussion and in the resolution of many doubts that much has been elucidated with great doctrinal acumen and subtle interpretation of the canons, which can pertain to this difficult form of judgment. Therefore, let Bishops, who are sometimes forced to correct rebellious subordinates, remember this, and we trust that they will less frequently hear that the Apostolic See has decided that their decrees are not sustainable. It is also permissible for us to add, for the sake of clarity, that Holy Fathers should not resort so readily to these extraordinary remedies, namely suspensions resulting from informed conscience, since it is their duty to treat their subordinates with paternal charity, according to the admonition of Trent, Session 13, chapter 1.

LUCION. CONCERNING SUSPENSION AND APPEAL. April 8, 1848. SUMMARY OF THE CASE. The Bishop of Lucion, upon taking possession of his Diocese, immediately received grave complaints from all sides concerning the improper way of life and corrupt morals of the priest Piveteau.

[*Latin ed. p. 300*]

300 APPENDIX III. who had governed the parish as an inamovable benefice by order of the Bishop for twenty-eight years. He suspended the aforementioned decree, confident that he knew, even then, that the parish priest was already prone to vice, so that during this interval, he might become so corrupted that even the guilty conscience, terrified by the constant affliction of his predecessor, might find some reason to excuse itself. Therefore, the former priest, after having used all his good will and having suffered the inhumanity of the pastor, changed his customs, abandoning his duties as a son, and hope vanished; for the remedies of justice descended. The day after, the Bishop, more certain, ordered that a thorough investigation be made into all kinds of crimes,

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from which emerged a collection of flagrant offenses that the parish priest had committed. Witnesses were summoned in this investigation, men of gravity and prudence, who, knowing the parish priest to be wicked and a scoundrel, and fearing his hatred and vexations, wished to swear that what they were about to affirm was true, and to keep it secret. Relying on these testimonies, the Bishop had full persuasion of the accused parish priest's impropriety; and, using the faculty granted to Bishops by the Council of Trent, Session 14, chapter 1, concerning appeals, he ordered the execution of the decree on May 25, 1846, during a visitation, in the presence of his secretary and the vicar general, and ordered the suspension of the criminal priest from all his functions, whether sacerdotal or parochial. The parish priest, seeing that he seemed to have a just and equitable judgment from the Bishop, appealed to the Archbishop of Bordeaux. He claimed that the episcopal judgment of suspension was unlawful and unjust, because,

[*Latin ed. p. 301*]

He had been declared suspended, without any warning or hearing, and with every avenue of his defense blocked. Finally, having vainly attempted to refute the new charges before the Bishop, he again sought to excuse himself before the Archbishop. The Archbishop acknowledged and informed the Bishop that no decree of suspension had been issued due to the omitted canonical warnings and other formalities. Therefore, if the parish priest were to appeal to the civil authority, and the episcopal judgment were to be rejected by the same, the Bishop would be slandered, as if he were acting arbitrarily, to the detriment of his dignity. The Bishop replied that he believed he had acted correctly with regard to the parish priest, in accordance with the resolutions and teachings of numerous sessions of the Holy Council and of Benedict XIV. In addition to this, the Archbishop inquired of the Archbishops of Lyons, Rouen, Besancon, and Rheims; who replied that he should attempt to reconcile the Bishop and the parish priest; and if this were not successful, that a judgment should be pronounced in favor of the tribunal regarding the interposed appeal. After mature deliberation, distinguishing censure from punishment, he concluded that the suspension could be maintained without canonical warnings or other formalities; and that the Bishop's decree should not be confirmed nor overturned, but should be retained as x III. 301 dictates, as temporary, not permanent. This opinion of the Archbishop provided an opportunity for the parish priest; who, having again appealed to the metropolitan, the Bishop warned him not to pronounce judgment, since the entire matter had been referred to the judgment of the Apostolic See. Upon learning this, the parish priest instituted a petition with the Holy See, requesting that a canonical investigation be instituted in his case, so that he might demonstrate his innocence. Furthermore, observations from both prelates, made during this interval, were sent to Rome. In the meantime, the highest ecclesiastical authority

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granted three out of five parts of the pension to the new parish priest, and also the parish house. However, in order that the Fathers might become even more aware of the parish priest's true character, it was also reported that he had been accused of theft, even of revenues belonging to the Church fabric, and of certain exactions, redolent of simony; and that the Bishop, observing due process, had condemned him to restitution under pain of excommunication, and to deprivation of the parish, incurring these penalties by his actions. He also appealed against this judgment to the metropolitan, but this is not relevant to the present question. A synoptic discussion regarding the suspension.

[*Latin ed. p. 302*]

302 APPENDIX III. seem to strive for, these are almost certain. Firstly, the power granted to bishops by the Council of Trent in chapter 1, session 14, to prevent clerics from advancing to the orders for any reason, even for a hidden crime, in any way, even extrajudicially, should not be extended to the second part of that chapter, which deals with suspension from orders and grades already received, unless "the judicial form prescribed by the holy canons" is observed, as Van Espen argues in his work *Iuris Ecclesiastica Universalis*, part 2, section 1, volume 10, number 27. He supports his opinion with the text of the Council, stating that in the first part only it is said "for any reason, etc., even extrajudicially," and that these clauses were omitted in the second; he gives this reason, because, indeed, admission to the sacred orders is mostly a gracious act, and it is not surprising that it depends on the bishop's good pleasure. However, suspension from orders already received implies a punishment, which requires a judicial process, just like any other censure, and therefore, he concludes, it cannot be imposed for a purely hidden crime, which cannot be proven in court. Van Espen's opinion is entirely consistent with what Gibert states in *Iuris Canonici*, volume 1, part 1, title 22, chapter 1, regarding the interpretation of the aforementioned council text, adding the reason that since suspension from orders deprives the cleric of a right rightfully acquired, and causes shame to the suspended person and public scandal, which does not occur in the denial of advancement to orders, such a suspension should not be extended, but rather limited, since it concerns matters that are odious. Secondly, although the broadest power granted to bishops by the Council of Trent in chapter 1, session 14, seems to apply to them both in the prohibition of advancement to orders and in the suspension from orders already received, as the Archbishop himself seems to believe, he nevertheless considers that this power is not at all granted to the bishops; because, as he states, in the case of episcopal decrees, the matter is about accusations against faith, morals, and justice, as well as about scandals, and transgressions against the Church's precepts, which are certainly not hidden crimes. With this established, it is necessary to observe the form of law, since such crimes

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could be proven in a public trial and publicly punished; and thus, both the council text and the resolutions of the Holy Congregation should be understood, which are presented by the bishop of Luçon in opposition. However, even if it is a matter of hidden crimes...

[*Latin ed. p. 303*]

303 Regarding those matters for which the Archbishop was then being accused, it should be noted that the judgment rendered in Lucca was suspended. Indeed, some things presented as evidence were of such great importance and, at the same time, were so opposed in their disposition, that it frequently happened, as the words themselves indicate, in chapter 20 concerning heretics, and also concerning Van Espen, that the remaining saints, the canon lawyers, unanimously held that a summary and secret judgment should be instituted, according to the disposition of chapter 1 of the 14th session, from which almost all the requirements of positive law, as laid down in the first part, can be derived, as is traditionally understood, and repeated in the second part. Reiffenstiel, in book 2, title 1, number 41, and title 19, number 29, states that it is permissible for bishops not only to grant advancement to the orders, but also to impose suspension from the reception of the sacraments for any reason whatsoever, even for hidden faults. This is because it is required that at least one public official, or at least two individuals of any kind who hear the testimonies and names, and who act judicially, as is most clearly stated in the records of the trial, should be present, as Fagnan teaches in chapter 12, and following, and in chapter 7, and following. Gonzalez, in the decretal, book 1, title 11, in the aforementioned chapter, number 15, states: "De Lucca, distinction 14, number 5." Gagliardi, in the Institutes, book 4, title 18, number 108, and following, and Barbosa, in the Decrees of the Council of Trent, to chapter 1 of the aforementioned session, number 1, Gallemart, ibid., number 1, and Giraldi, in the commentaries on the aforementioned chapter, number 1, and also Van Espen himself, with the most eloquent words, defended the same opinion twice, which he had received from the Supreme Sacred Congregation, as is evident from the bulls of Gregory XV, for the entire flock of the Lord, and of Benedict XIV, concerning the Sacrament of Penance, as Bordonius, in book 2, chapter 8, of the work "Sacrum Tribunal," states, number 3, where several resolutions of this Sacred Congregation are cited, number 107, and 13.

[*Latin ed. p. 304*]

304 APPENDIX III. And indeed, such was the constant opinion of the Holy Congregation concerning the interpretation of that chapter. In the year 1582, on June 22nd, it was decided in the Congregation that bishops possess the power, either to prohibit advancement to the orders, or to suspend those who have already received them, as is evident from book 22,

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in the memorials to the 14th session, chapter 1, on reform, page 24. And when, on January 27th of the following year, 1583, there was doubt as to whether such prohibitions and suspensions could be perpetual, on February 3rd, 1593, it was resolved that chapter I of the 14th session on reform applies to both temporary and perpetual prohibitions and suspensions, as is evident from book 7 of the decrees, page 89, in "Nullius." Likewise, the Holy Order judged in Alerien, on November 24th, 1657, where, after careful examination, it was decided not to depart from the ancient declarations given on this very matter on several occasions, as is evident from book of decrees 21, page 134; likewise, in Bononien, on November 14th, 1654, book of decrees 19, page 416; in Isernien, on December 20th, 1687, book of decrees 37, page 714, regarding the first doubt. These resolutions of the Holy Order, besides the aforementioned chapter of Trent, are also most consonant with the preamble of that session. For in the preamble, the most holy synod is concerned about those who ought to be promoted to the orders, rather than those who have already been promoted, and especially about clerics who are destined for the care of souls; and from this, it proceeds to the first chapter, in which it grants bishops such extensive power, so that they may more freely carry out what is commanded to them above, as the most learned Fagnan explains in chapter "Ex tunc de temp. ordin," numbers 15 and 16. Having established the power of the bishop regarding the imposition of suspension for any reason, even extrajudicially, any requirement of a judicial form is eliminated. However, the exception requested, namely, that in the case of public crimes combined with hidden ones, it is not permissible for the bishop to use the power granted to him by the aforementioned chapter of Trent, but that a judicial process must then be followed, presents rather an argument of subtlety than a true knot of difficulty. For, in the first place, the clauses that accompany the granted power are so broadly stated that they are subject to absolutely no limitation. Indeed, any clause, being universal, includes every mode, even those that would not be able to be rendered according to the principle of universality. Rota decis. 51, no. 5, part 8, decis. 57, no. 10, part 4, vol. 2, and decis. 335, no. 16, part 5, vol. 1, more recent. Barbosa in Diction, more commonly used. The word "quicumque" means "all," including everything and excluding nothing.

[*Latin ed. p. 305*]

IX, m. 30S. Verum est quod clausula haec, quamlibet sit clausula, et potest esse universalissima, et comprehendit ergo etiam delicta publica et occulta impropria. *Rota decis.* 7, tam. Denique, haec obiectio ad numerum 4, partem 4, tomum 2, *de summum valere posset*, ubi omnia delicta essent publica; at ubi delicta publica mixta sunt cum occultis, debent absolute evanescere, cum, omissis publicis, persequi episcopus potest occulta, vigore facultatis ipsi concessae a Concilio in memorato capite,

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sessione 14. *Rota decis.* 30, numerum 22, partem 5, tomum 1. *Decis.* 81, numerum 4. *Decis.* 367. *Ad rem Pignatell.* consult. 8, numerum 2, *joar.* 1, *decis.* 164. *Tom.* 9, numerum 5. Inquit: "Quatenus censura prolatae super pluribus delictis non sustinebantur super unoquoque illorum, satis est quod ex uno comprobarentur, cum tantum unumquodque sit sufficiente ad illas incurrendas." Hæ autem, arguendo a maiori omnibus posthabitis, repugnare ad minus, si huiusmodi facultas videtur comprehendere crimen occultum, naturae exceptio proposita, cum quod uni episcopo innotescere posset, et poena multari nequibat, eò magis publicum debet, quod certe ex ipsa sua notorieitate nulla ratione negari potest, ac proinde defensionem non admittit. Praeterea, S. Congregatio casum explicavit in cit. *Bononien.* 14, Decembris 1654; ubi resolvit, suspendere posse Ordinarios ab ordinum exercitio ex legitima causa, etiam extra iudicium, Clericos, et Presbyteros, saeculares etiam Parochos: ex qua resolutione probe patet causam, dummodo sit legitima et episcopo constet, *Acta, Tom. XIV, fase. CL XIII, 20*.

[*Latin ed. p. 306*]

306 APPENDIX III. In the case of a recalled judgment, as in Vercel, on March 21, 1643, the appellation is not admitted; this must be understood as meaning that if the grievance has not been presented due to an excess, it is not to be admitted, as Bordonius states in his work on correcting errors, as Ferraris teaches in *De testibus singularibus in materia sollicitationis*, in the *Bibliotheca canonica*, volume V, article V, numbers 1 and 2; and it must be understood with greater precision that the appellation is suspensive, as Fagnan states in chapter "Ad nostram de appellat," numbers 8 and 9. Barbosa, in his commentary on the Council of Trent, session 32, chapter 1, number 6, session 24, chapter 10, numbers 2 and 8, and in the decree *Vota dec. 4*, book 6, number 73 and following, and Ferraris in the same place, number 3 and following, speak of correction. Furthermore, witnesses in the case, even if they appear to be singular, can be considered unreliable, since, although it is not the case that anyone denies that most crimes are of a nature that is entirely evident, the question is about the right of appellation, which is granted by decrees of suspension, as the *bursdigalensis* metropolitan believes, and which he considers to be applicable when there has not been a judicial process, or a process compiled and completed, as was resolved in the Kingdom of Sardinia on May 15, 1700, regarding the first doubt. Grallemart, also, a little further on, states that the decree on appellation, from chapter "Constitutis," book 2, of that chapter, does not apply when the bishop has proceeded with a process that is not judicial, even if it is extrajudicial, and with all due process; in this case, the appellation would not only be devolutive, but also suspensive, as taught by Fagnan and Ferraris, as cited above. The Rota, in decision 399, number

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4, and in decision 458, number 4, and in part 14, also states this.

[*Latin ed. p. 307*]

Rec. and Barbosa in the Council of Trent, Session 13, chapter 1, number 7, and Session 24, chapter 10, numbers 3 and 7. It does not seem ambiguous that, from the suspension, of which we speak, an appeal may also be granted in cases involving a suspension. It cannot be objected that the bishop acted as a delegate of the Apostolic See, and therefore that an appeal is not granted from him except to the Apostolic See; for it is certain that, by virtue of such a faculty, the right belonging to the metropolitan is not taken away, except whenever the bishop proceeds, according to the Council of Trent, as a delegate of the Apostolic See in cases that are not within his jurisdiction; otherwise, it must be said that he uses the same prerogative in cases that are within his ordinary jurisdiction. Thus, Barbosa most eloquently states in Session 24, chapter 40, numbers 9 and 10, and in his work "De officio et potestate episcopi," numbers 73, 35, and 92, 14. Gallemart, in his commentary on Session 13, chapter 2, number 2, and Session 14, chapter 4, number 1. Fagnan, in the chapter cited, number 9. Pigliateli, volume 10, consultation 67, number 12, and consultation 149, number 15. Ventriglia, in his "Practices," part 2, annotation 24, section 2, number 26, and in many other instances, resolved by the Holy Congregation in Tarraconensis, book 1, decrees, page 7. Zamoren, book of decrees, 2, page 139, and Januensis, book of decrees, 10, page 106, in the second question. And indeed, otherwise, the suspended party would not have the power of his defense. Therefore, as noted in paragraph 307, since, according to the disposition of the aforementioned canon, the right of appeal is not openly taken away, as the Archbishop indicates, in cases of doubt, one must return to the common laws. But if, despite these things, they wish to admit an appeal, as Benedict XIV teaches in "De synodis dioecesibus," book 12, chapter 8, the Archbishop nevertheless believes that this should never be the case; and he confirms this first from the nature of the crimes, for which the suspension was inflicted. For since these are public crimes, as the Archbishop himself gathers from the decrees of suspension, the judicial forms must necessarily have been followed, and the accused must have been convicted with valid proofs. Therefore, if this has not been done, it must be said that the bishop has exceeded the power that he has according to chapter 1 of Session 14, concerning reforms. The bishop strongly opposed these arguments. Although nothing can be taken away from the authorities cited by the opposing side for the purpose of defending the appeal, at least in cases of suspension, both the opinions of the doctors and the resolutions of the Holy Congregation admit of a reconciliation, even though they seem to contradict each other. Indeed, when speaking of the power that the bishop has to proceed according to informed conscience, according to chapter 1 of Session 14, concerning reforms, all the doctors,

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without dissent, agree among themselves to reject an absolute appeal, and to grant it only if...

[*Latin ed. p. 308*]

308 APPENDIX III. Regarding recourse to the Apostolic See, v. Suspension, art. 1, no. 16. Thus, Barbosa, in *Facilis*, cap. 1, no. 1, vol. 1, states that there appears to be an apparent contradiction in the manner in which the law of the Church, lib. 1, cap. "Ad aures conciliatio," no. 5, distinguishes between authorities, whether of doctors or of the Congregation. In some cases, the disposition is general, while in others, it is specifically peculiar, and, in particular, concerning suspensions. Cardinal De Luca, in *de ben.*, s. 71, no. 5; Grimaldi, in *restr.*, part 2, cap. 1, ad cap. 1, sess. 14, de iur. pont.; and the most excellent Bellarmine, in the aforementioned *firmum*, consistently maintain that when it is a question of suspensions issued under the authority of this chapter, namely, chapter XIV, no. 4 and 5, and when an appeal is offered regarding the matter, it is not in a devolutive, nor in a suspensive sense, but only a recourse to the Apostolic See; in other cases, however, an appeal is admitted for its variety, whether solely in a devolutive manner, or both in a devolutive and suspensive manner. This distinction is clearly demonstrated by the Holy Congregation itself, as seen in the aforementioned *Calaritana*, in the year 1624, in the book of decrees, July 16, 1695, decree 45, page 10, in response to a question; and in the response to the Archbishop of *rhemensem*, in the book of literature, page 400, April 2, 1668; and regarding the suspension from orders, whether received or granted, as in *Veru*, April 3, 1621, from the memorial book, to the session, cap. 1, no. 1, in the *Calaritana* of 1624, book of decrees, no. 12, page 222; in *Sagonen*, June 21, 1625, book 35, page 1; and in the aforementioned *Bononien*, November 14, 1654; and in *Capritana*, December 16, 1730. Furthermore, the same was ordered to be observed by the Venetian legate, March 30, 1742, as it is clear from the instruction reported by Ferrar, in *Bibliotheca canonica*.

[*Latin ed. p. 309*]

The question, under § 38, establishes that either an appeal to a higher authority within the diocese, or merely a recourse to the Roman Pontiff, is granted, depending on the nature and quality of the causes. Therefore, the resolution of the Holy Congregation, presented in the case of the Kingdom of Sardinia, and the instruction to the Venetian nuncio, concerning those suspensions, are to be understood in cases where the bishop proceeds not by virtue of chapter 1 of session 14 of the Council of Trent concerning reforms, but by some other title, or authority. Furthermore, even if these cases are considered under the meaning of chapter 1 of session 14 of the Council of Trent concerning reforms, it must be carefully noted that this is not an ordinary appeal to the metropolitan, but an extraordinary appeal to

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an apostolic judge delegated, who does not proceed by ordinary authority, but only by the virtue of a special delegation. And therefore, the exception requested based on the natural right of self-defense is of little value; for it has wisely been established that it is always permissible for one who is suspended to invoke the authority of the Apostolic See, to whom the bishop is bound to disclose the causes of the suspension; and therefore, since such a recourse amply suffices to remedy the lack of an appeal, as taught in *ad rem Barbosa*, volume 1, number 79, no obstacle is placed in the way of the accused obtaining his own defense. The third doubt depends on the preceding resolution. If the Holy Congregation judges that there is no place for an appeal under article 309, then the sentence issued by the metropolitan falls with its own weight, due to an obvious lack of jurisdiction, as the bishop of Luçon believes. However, if the Holy Congregation rules in favor of the metropolitan regarding a right that was to be known by the metropolitan himself, then the metropolitan's sentence would nevertheless be tainted by substantial defects, whether external or internal. An external defect is found in the sentence if the formalities prescribed by canon law are omitted; for example, if no citation preceded it, nor a hearing, either of the bishop himself, as a party, or of witnesses, and no tribunal was established. Another defect is also found, namely, the interposition of an appeal after the lapse of the prescribed time; for after sentences were issued on June 15th and 24th, a recourse was made on July 29th, whereas a complaint was presented to the metropolitan by letter on June 19th, and was never admitted by him as a legitimate appeal. It does not seem sustainable if considered internally. First, it is evident that the metropolitan exceeded the limits of his authority, since the matter concerned the nullity and revocation of the bishop's sentence; yet he did not pronounce on either its nullity or its validity, but simply issued a declaration regarding the infliction of a suspension.

[*Latin ed. p. 310*]

310 APPENDIX III. concerning the nature of suspension. However, the judge must adhere to the terms of the appeal, and judge according to them, since in the case of an appeal, only the confirmation or rejection of the sentence already passed is at issue, as the Rota states in decree 231, paragraph 10, part 12, recent. Furthermore, the decree of the metropolitan infringes upon the episcopal right, and is therefore unjust: for it declares a suspension to be a purely provisional or temporary punishment, without having knowledge of the cause, when it itself has no knowledge of any such suspension, contrary to the right granted to bishops by the bulls of Gregory XV and Benedict XIV, mentioned above, and also by the decree of the Supreme Universal Inquisition, issued on August 5, 1745, and reported in appendix to volume 1 of the bull of Benedict XIV, number 8, in which, among other punishments against those who solicit in confession,

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it is stated that they incur "even a perpetual prohibition from celebrating the Sacrifice." For the bishop could, under this title, impose a suspension, in which case the injustice of the archbishop's sentence would be evident to all. In any case, the sentence must be considered, and it cannot be maintained; for it was impossible for the archbishop to apply punishments for crimes without having considered their gravity. The fourth question asks whether a parish priest who has been suspended incurs an irregularity by celebrating Mass on a Sunday, administering the sacrament of Baptism only once, and performing other functions of his office while wearing the stole, despite the decree of suspension and under the pretext of an appeal. It must be kept in mind that a suspended person incurs an irregularity not only if he presumes to celebrate the sacred mysteries during the suspension, but also if he solemnly administers Baptism, or sacramentally absolves, or sings in the choir as if celebrating, or performs other functions, especially if he wears the stole, as noted by Bonacin in *de censur.*, dispute 7, question 7, point 6, number 3, and following. With these premises in mind, it is the universally accepted opinion of many that an irregularity is incurred for disregarding the suspension, whether this is properly considered a censure or a punishment, as argued from chapter 1 on sentences and the matter judged, in 6, and from chapter 1 on sentences of excommunication, ibid., as stated by Gibelin in *de irregularitatibus*, page 1, chapter 5, consequence 1, number 6; Suarez in *de Censuris*, dispute 26, section 2, alternative; ibid., treatise, part 2, dispute 6, on suspensions, chapter 2, §; and Bonacin in the same treatise, dispute 3, question 6, point 5, proposition 3, with the added reason that, since the suspension is merely...

[*Latin ed. p. 311*]

IX III. The penalty, by depriving [the priest] of the sacred ministry, is like suspension, which is properly a censure, and it seems no less improper for one suspended as a penalty for a crime to administer the sacraments, than for one who, through obstinacy, is subject to the censure of suspension. Nor can this irregularity be avoided under the pretext of an appeal; for, as has been demonstrated above, either no appeal is admitted from such suspensions, or, if an appeal is granted, it never holds in cases of suspension. As the most eminent Pope Benedict XIV teaches in *De Synodo, Dioeces, Lib.* 12, *cap.* 8, no. 5: "Ferrus, v. Appellatio, art. 10, no. 31, in addition, and v. Ordo, art. 4, no. 37, and following, in addition." To all this is added the authority of this Holy Order, which has consistently ruled in similar cases that an irregularity is incurred, as it responded in Sagonen, June 21, 1625, no. 6, 24, page 1: "No appeal is granted from such a suspension, and the parish priest who administered the sacraments has incurred an irregularity." And it resolved the very same case entirely in Isernien, December 20, 1687, *liber decretorum*, 37, page 714, and April 10, 1688, *liber dec.* 38, page 182.

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Now, it remains to be determined whether the parish priest has indeed incurred an irregularity, and then the question arises as to whether that irregularity should be considered among those for which, because they arise from a hidden fault, dispensation pertains to the bishop, according to his judgment, by virtue of the faculty granted by the Council of Trent in Session 24, chapter 6, on reform. A certain rule is traditionally given for determining the bishop's faculty from the Council, chapter 6, Session 24, on reform, and this rule is followed by all doctors. And Fagnan, in *lib. 3. Decretal, ad cap. Vestra de cohab.* in the end of the chapter, testifies that the Holy Congregation affirmed this on September 9, 1582, with these words: "The Holy Congregation judged that, when the crime from which the irregularity arises is public, the act by which the irregularity is incurred must be hidden, so that the bishop cannot grant dispensation; for example, if a priest is publicly excommunicated, or notoriously a simoniac, he secretly celebrates Mass; but if the crime is hidden, such as excommunication or fornication, but the act of celebrating Mass, by which the irregularity is incurred, is public, the bishop can nevertheless absolve him from all irregularity, according to chapter 6, Session 24, on reform." This distinction is followed by all interpreters of the Holy Canons, along with Fagnan.

[*Latin ed. p. 312*]

3i2 APPENDIX III. cit. embrace, and especially the jurisdiction, in which the destitute Barbosa, in allegation 38, number 26, through both spiritual and temporal means, for a long time, as in chapter 6, concerning "porali," session 24, number 27 and 29. Moreover, that such a suspension, in the formula of law, book 2, title 13, and form 3, Bonacin, disputes 7, question 3, point 6, proposition 2, and VaneS., the Congregation, although formerly it considered, as stated above on page 2, section 1, title 10, "item 19, chapter 1 of the Council of Trent," session 14, concerning reforms, whether such a suspension, by which the parish priest Pivetau was suspended, was known to the parish of Roche-Ser, or at least to some of them: but this circumstance constituted the substance of the matter, and although it cannot be clearly deduced from the bishop's relation, it nevertheless seems to have intervened, since on the same day, June 15, 1846, another priest was removed from the parish, for which a decree of suspension was issued. From this fact, it is probable that the suspension of the parish priest was known to at least some of the parishioners; hence, the request for dispensation concerning the irregularity, not to the bishop, but to the Roman Pontiff, as per the decree of the Council of Trent, session 21, chapter 6. Furthermore, in the matter of the restitution of the parish priest Laetti to his church, after he had been removed, it is doubtful whether he should be restored, according to the decree of Saint Severin of September 19, 1778.

Now, it remains for you, Most Eminent Prelate, to understand from this very response what is required of you. He explicitly requests that a process

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be instituted in his favor, observing the form of law and the prescriptions of the canons concerning the parish priest Laetti before the forum of the Council of Trent, and he claims that this petition is consonant with natural law, which forbids denying anyone a defense. Finally, he laments his miserable condition.

In Piacenza, on February 26th, the restitution of the parish priest to his parish was delayed.

[*Latin ed. p. 313*]

IX. m. 313 num, nisi donec recedat ab illa. Hinc, si parochi contumacia non frangatur, ipseque haud praebeat vera emendationis ac poenitentiae signa, episcopi arbitrio et prudentia probanda, non esse locum suspensionis relaxationi dicendum est, quemadmodum vel ipsa S. huiusce Ordinis disciplina docet. Placeat itaque E.E.VV. quae sequuntur dirimere rogata quoad parochum Franchi, consimili suspensione de paroeciali munere delectum, respondit: affirmative, peractis per decem dies exercitiis spiritualibus in domo religiosa. Quanti tamen haec facienda sint facile intelligent E.E.VV. ubi hinc recolant ea, quae late in primo dubio disputata sunt de episcopi facultate procedendi contra delinquentes, omissis omnibus dubiis iuris solemnitatibus; illinc I. An suspensio lata ex invero sedulo perpenderint criminum naturam et gravitatem, quorum parochus accusatur, et condicionem personarum, quae, firmitate attestante episcopo de illarum auctoritate et pietate, solo religionis zelo testimonium in parochum reddidisse censentur. Sed prae oculis insuper habeant E.E.VV. alteram episcopi sententiam, primam partem, negative ad sedem cundam.

I. An ab huiusmodi suspensionis decreto detur appellatio ad Metropolitanum, seu potius sit tantum locus recursui ad S. Sedem in casu.

II. Et quatenus affirmative ad primam partem, negative ad secundam.

III. An constet de legitimo iudicato Metropolitanum burdigalensem in casu.

IV. An parochus ob violatum suspensionem contraxerit irregularitatem in casu.

Et quatenus affirmative est.

V. An, et ad quem spectet dispensatio a contracta irregularitate in casu.

VI. An, et quomodo sit indulgendum precibus eiusdem parochi in casu.

RESOLUTIO. Sacra Congregatio Concilii sub die 8 Maii 1848 censuit respondere:

[*Latin ed. p. 314*]

314 APPENDIX III. Regarding I. Affirmative, according to the form of chapter 1, session 14, of the Council of Trent, concerning reform. Regarding II. Negative regarding the first part, affirmative regarding the second. Regarding III. Provided in the preceding section. Regarding IV.

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Affirmative. Regarding V. Affirmative, concerning the Holy See. Regarding VI. Deferred; and the parish priest should appeal after having given signs of amendment.

From which the following are deduced:

I. That, with almost unanimous consent, the most holy Canons are considered to be interpreted in such a way that, by virtue of session 14, chapter 1, of the Council of Trent, concerning reform, Bishops are not only able to prohibit the ascent to the orders, but also to decree suspension from the orders already received, for any reason whatsoever, even for a hidden crime, in any way extrajudicially.

II. That this has been affirmed by the constant interpretation of chapter 1, session 14, by the most holy Congregation, declaring that the power of Bishops is equal, whether to prohibit the ascent to the Orders, or to suspend from the orders already received.

III. Although the most holy Congregation, in the decree *Nullius* of February 3, 1593, concerning chapter 1, session 14, of the Council of Trent, holds that the prohibitions and suspensions, both temporary and perpetual, are valid, it seems to be the intention of more recent decrees that such suspensions cannot be perpetual.

IV. Likewise, in the aforementioned decree *Nullius* of February 3, 1593, the most holy Congregation declared: that a temporary prohibition and suspension is said to be that which proceeds extrajudicially by a Bishop, concerning a hidden crime, at his own discretion, whether prohibiting or suspending.

V. Hence, it can easily be understood that the necessity of the judicial form is easily circumvented, as far as suspensions imposed by Bishops are concerned, by this authority, for any reason whatsoever, even extrajudicially, no matter how this suspension is understood, whether as a censure or as a punishment.

VI. In the case of concurrent public and hidden crimes, Bishops can use suspension, from an informed conscience, to pursue hidden crimes, setting aside others: for it is sufficient that the censure be proven by one crime, since each is sufficient to incur the censures.

VII. According to the current jurisprudence, it is necessary to proceed judicially, since all crimes are public; although the clause of Trent states "for any reason whatsoever and in any way," so that it seems to include even public crimes: for if this power includes a hidden crime, which could not be punished before Trent, then all the more it can include a public crime.

VIII. All Doctors, and also the most holy Congregation, hold that...

[*Latin ed. p. 315*]

X. It is not permissible to grant an appeal, neither in a suspensive nor in a devolutive form, but only a recourse to the Apostolic See, arising from

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the judgment of the Bishop, proceeding according to the norms of chapter 1 of session 14 of Trent.

IX. Such a recourse, to be made directly to the Holy See, to which the Bishop requested for suspension is obligated to open the causes, suffices to supply the lack of an appeal; therefore, the accused is by no means prevented from preparing his defense.

X. During the suspension, the priest who administers the sacraments becomes irregular; because in such suspensions, there is no place for an appeal, at least in a suspensive form.

XI. Bishops cannot absolve from irregularity, when the offense from which the irregularity arises is public; even if the act by which the irregularity is incurred is hidden: for example, if a priest, publicly excommunicated, or notoriously a Simonist, secretly celebrates Mass; otherwise, if the offense is hidden.

DISPENSATION FOR MARRIAGE.

March 12 and May 14, 1881.

COMPENDIUM OF THE CASE.

Anthony and Assumpta, in the year 1870, although they had previously entered into betrothals with others, celebrated a marriage before a priest, under pressure from their parents. After the marriage was completed, each went to their own home; but such sorrow entered the mind of the bride, that she could not even "bear to see the face of her husband," and therefore, she avoided his presence with great diligence. However, Anthony, for reasons of military service, departed the following day, and then, after forty days, returned home, and decided to bring the bride, who had never left her parents' home, to the municipal authorities, in order that they might be united in civil marriage as well. The bride, although she had previously refused, seemed to yield to the reproaches of the priest and her parents, to the desire of her husband. But before the civil authorities, when asked whether she wished to have Anthony as her husband, she replied: "I do not wish."

[*Latin ed. p. 316*]

316. After several months had passed, Assumpta secretly left her paternal home. She fled with Dominic, to whom she had previously made a promise of future marriage, and entered into a clandestine marriage with him, with whom she later bore two children. Anthony, however, went to the American regions, and, desiring another wife, refrained from celebrating the marriage, upon the urging of the parish priest, until a decision was obtained from the Holy See regarding his previous marriage, and he

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presented a petition for a dispensation from his prior marriage. The Archbishop immediately began the proceedings, and, under oath, heard Assumpta and her mother, as well as Anthony's father and uncle, all of whom testified that there was no cohabitation and no consummation of the marriage. Furthermore, the parish priest who had joined these young people in marriage, as well as other witnesses, testified that the marriage was only valid and not consummated. Then, the same Ordinary, by order of the Sacred Congregation, completed the proceedings; and for the purpose of this decree, Anthony was examined before the Neo-Ebora court, and the father, nephew, and sister of Assumpta, as well as Anthony's mother, were heard by the Sacred Congregation, all of whom testified regarding the lack of consummation and cohabitation.

SYNOPTIC SUMMARY OF THEOLOGICAL OPINION. This theologian judged that the marriage in question was null and void due to a lack of consent. For marriage is contracted solely by consent; and when this is questioned, it must enjoy full security, so that the mind of the person being judged may be free, lest, through fear, she say that she wishes to marry when she hates it, and suffer the consequences that often occur in forced marriages. Assumpta, internally, did not consent, although she verbally stated that she wished to marry Anthony, because her heart was inclined towards another, to whom she had previously promised marriage. Even at the solemn moment when the marriage was to be celebrated, the woman's internal resistance was evident; for the parish priest –

[*Latin ed. p. 317*]

MATRIMONY 317. The girl, visibly agitated, hesitated, and then, spurred on, responded. For the young woman, simple in mind, standing before the Parish Priest, whose authority she revered, before her relatives, witnesses, and friends, on the sixteenth year of her age, while all presumed to hear her consent, as if it were a duty to be performed by her, how could she manifest her dissent except by silence? If she is silent, she appears to be unwilling; and she remained silent. The conflict in her mind was not about the choice itself, nor about the contract to be completed, because she rejected the act itself, but about the expression of her feelings. Modesty and fear agitated her soul; she was compelled to give an affirmative answer. However, her subsequent actions explain her state of mind more clearly; for she showed indifference when the bridegroom departed for military service, and she demonstrated absolute opposition before the civil authority, when it was declared that the marriage could not be dissolved further due to civil sanction. The reverential fear in the girl grew heavier because of the threats and beatings of her father, who refused to swear to provide her with a dowry. If this reverential fear, combined with threats and other fears, would have caused the marriage to be annulled, then it would be entirely correct to say that the marriage

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was indeed null. However, the lack of consent, based on the facts and subsequent circumstances, clearly demonstrates that the marriage, in fact, continued to endure. Furthermore, the marriage of Assumpta with Anthony still remains valid, because there has not yet been conjugal intercourse, as has been proven by the dissent of the bride, by the injury to Anthony's honor, by his emigration to the American regions, and by the civil marriage celebrated and consummated between Assumpta and Dominic. The reasons for a dispensation from this marriage, and for its non-consummation, are evident to all. And the first of these reasons is the fear in which the marriage was contracted. For that fear, which would be considered insufficient to declare the marriage null, is nevertheless a sufficient cause to obtain a dispensation. Furthermore, there is the irresistible aversion on the part of the bride, the legitimate offspring born from the civil marriage, and the repugnance.

[*Latin ed. p. 318*]

318. Concerning the marriage of Antonius, who has already petitioned for a dispensation, and the bride. OPINION OF A CANONIST. The Angelic Doctor, *Summa Theologica*, 2nd question, 104th article, 5th point, states: "In those things which pertain to the nature of the body, a man is not bound to obey another man, but only God, because men are, by nature, equal." Therefore, neither servants are bound to obey their masters, nor are children bound to obey their parents concerning contracting marriage. From this, the Consultor concluded that consent in marriage must be entirely free. This is entirely consistent with canon law, as stated in cause 27, question 2, 62: "It suffices, according to the laws, that there be only the consent of the parties; if, in marriages, this should be lacking, all other things, even if the marriage is celebrated with intercourse, are void." Given these and other principles established in law, the Consultor inquired whether the marriage was null in this case due to the lack of consent. From the testimony of the witnesses, if credence is to be given to them, it is evident that the bride did not, in fact, give any, or at least a very hesitant, consent to the marriage, and that, due to the coercion of her father and others present, she did not have freedom of will. It is also clear that, if we consider the case of a fifteen-year-old girl, naturally timid, who is, against her will, induced by persuasion, prayers, threats, and beatings by those towards whom she feels reverence, to enter into marriage, then... In this regard, Sperell, *Decisiones*, 65, number 67, states: "But in our case, even the beatings, which indeed were not necessary to prove fear, are sufficient, since threats, along with reverential fear, are sufficient, not only in a timid woman, or in a boy, as everyone admits, but also in an adult man." Furthermore, the lack of free consent in a woman can also be argued from the things that preceded the marriage. All the witnesses agree on her aversion and reluctance to enter into such a marriage; and the parents of the bride, when questioned, confirm this.

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However, all of these considerations relate to the aspect of justice, but since the grace of a dispensation concerning a valid marriage is being sought, it must be determined whether the marriage...

[*Latin ed. p. 319*]

MATRIMONII 319. It must be determined whether the marriage has been consummated, and whether there are just and honest reasons for obtaining such a dispensation. To prove the lack of consummation, among other proofs, the oaths of both spouses will be taken, who, with one voice, assert that the marriage has never been consummated through their own fault, either due to a lack of opportunity or due to the woman's unwillingness. Furthermore, just causes for obtaining a dispensation concerning this marriage must be presented; among these, the most important are fear suffered previously, or aversion of affections, or irreconcilable hatred, as can be seen in Sánchez de Matrim., book 2, dispute 16. Some authors believe that one or the other of these causes is sufficient to obtain this grace, as Ursaya discusses in disputation 21, numbers 60 to 72, volume 3, part 2.

OBSERVATIONS OF THE DEFENDER OF THE HOLY BOND. He warned that the proceedings in the case were irregular, and that they must at least be rectified, so that the case could be properly examined on its merits. After making these observations, he said: Although canonists have become more lenient, to the point of allowing the assertion of the spouses to provide strong and conclusive proof, as the canons require, they nevertheless admit this only if the assertion is supported by certain favorable circumstances, such as that the spouses have never lived together, or have been separated. But the assertion of the spouses regarding the lack of consummation must be consistent in every respect; this is lacking in the present case. For when the woman was questioned, after the marriage, whether she had ever lived with her husband, she replied: "After the celebration of the marriage, I went with my parents to our home; the bridegroom went to his own home." The bridegroom, when questioned, said: "After the marriage, we all went to the bride's home; that day was solemnly celebrated there." From this discrepancy, anyone can see that there is a lack of conclusive proof for obtaining a dispensation concerning the valid marriage. Furthermore, from this delay at the bride's home, a strong suspicion arises that the spouses may have been together. And therefore, it seems superfluous to inquire about the causes, since in law it is proclaimed that, if there is a possibility of the consummation of the marriage...

[*Latin ed. p. 320*]

320. Concerning marriages and presumptions that obstruct them, dispensation is to be denied, according to S. C. C. Thien. Matrim. 16 December, 1791. With these considerations, it was proposed to the judgment of the

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Most Eminent and Reverend Fathers to resolve whether consultation with the Most Holy Fathers should be sought concerning a dispensation for a marriage that is valid but not consummated in a certain case.

RESOLUTION. The Sacred Congregation of the Council, having considered the matter, on the 12th of March, 1881, decided to respond: "Affirmatively, with a prior absolution of the actors, for caution's sake" (1). On the 14th of May, 1881, the question was again proposed under the doubt: "Whether one should adhere to or depart from the decisions in this case," and the response was: "Adhere to the decisions." (1) See, for deductions regarding the matter, Vol. XII, page 629.

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CONCERNING MARRIAGES. On the 14th of May, 1881.

COMPENDIUM OF THE CASE. Through the effort and work of Joseph, the marriage was arranged between Antonia, of the Diocese of D., and Antoninus, of the place of Burgium, in the Diocese of A. This marriage, after a preliminary and unannounced notification, was celebrated before a priest delegated by the Vicar General, in a private house in the city of P., where Antonia had arrived a few days earlier together with her brother, Joseph. After the completion of the three days following the ceremonies, the bridegroom, Antoninus, requested to visit the parents, and he remained there for several months.

[*Latin ed. p. 321*]

MARRIAGES 321 were delayed, until, having departed from the city of P., they returned there again. For approximately five years, the spouses, together with their twin daughters born from this marriage, lived together peacefully in the same manner of life, until discord arose between them, and in May of 1855, the husband bid farewell to his wife and returned to Burgium. The woman, in 1861, presented a petition to the Archbishop of P., pleading that the marriage, due to the vice of clandestinity, be declared null and void, since the priest before whom it had been celebrated was not his own proper parish priest. Although the petition was immediately received by the Archbishop of P., the legal proceedings were not initiated until 1878, due to political disturbances that affected the entire island; and after these were properly completed, and after the reasons were presented by both parties, with the scales balanced, on July 10, 1879, a judgment was issued in favor of the validity of the marriage. However, the woman did not acquiesce in this judgment of the court; rather, without any delay, she appealed to the Most Holy Prince, requesting that the cause be examined directly before the Sacred Congregation. After the Ordinary was informed, as is customary, the Sacred Congregation issued a decree on August 23, 1879. After this, the cause, in due order, was brought before the Court of Appeal, and examined in accordance with the Constitution *Multis gravissimis*, promulgated by Pope Pius IX, which, on April 15, 1880, rejected the

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woman's petition and confirmed the judgment of the Court of P. Defeated by this double judgment, the woman appealed to the Sacred Congregation, so that the cause might be examined in a third instance. Soon, the defender of the marriage, by office, asserted that it was no longer possible to discuss this cause, given the judgment already rendered, based on the two concurring judgments. When the defender, Antonia, learned of this, she immediately attempted to refute the objection, presenting another petition in which she also requested restitution, as far as necessary. Atta, Vol. XIV, fasc. CLII, 21.

[*Latin ed. p. 322*]

322. Concerning Marriages: A Syro-Egyptian Disputation. In defense of the woman, the author, after first discussing the exception to the principle of a matter already judged, recalls that, as stated by Gelasius in his epistle 7, addressed to the Bishop of Dardania in the year 495, the Apostolic See possesses the right to know and to judge all ecclesiastical causes that are conducted throughout the world, to which appeal can be brought. He considers it fitting and highly consonant with reason that, as stated by Benedict XIV in his letter addressed to the Archbishop of Groanum, grave and difficult questions should be submitted to the examination of the Apostolic See. Furthermore, he adds that, concerning matrimonial causes, which, according to the Constitution *Dei Miseratione*, may, due to the passage of time, be considered as matters already judged, they can, in the second and third instances, be brought before the Holy See for review, as stated in the cited Constitution, § 16, and in the Glossary, in chapter *Ex litteris 4 De in integr.* He also points out that Benedict XIV does not speak in his Constitution of a judgment that declares the marriage null, nor, indeed, of one that declares its validity. For, he states, 1. The Roman Pontiff, at no time, distinguishes between these two; therefore, it is not permissible to impose such a distinction upon him; 2. This distinction completely vanishes after the Apostolic Letters of Pope Pius IX, issued on the most solemn day of January 28, 1864, in which, having abolished the tribunal that was called the Royal Legation in Sicily, he clearly states the manner in which causes are to be known in the future, and he establishes in § 6: "Any person who, having received a second sentence from the Metropolitan... grave, may appeal to the Roman Pontiff, for the time being, so that the cause may be resolved in the Roman Curia according to the law." However, in the absurd hypothesis in which a matter is considered already judged, it does not, he maintains, follow that the remedy of restitution should be denied, as is proposed in the second doubt. Furthermore, concerning a woman who seeks the nullity of a marriage, and concerning women who are compared

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to minors, and concerning those whose rights are violated...

[*Latin ed. p. 323*]

MATRIMONII 323, the author demonstrates that such a remedy must always be employed, citing the authority of Molin, *disp.* 574; Session, *lib.* 2, chap. 17, on Contracts, in general, doubts 9 and 10, no. 67. And this, because of the extreme weakness of the human spirit, which Innocent III himself observed in a certain passage, chap. 600, in his letters, when he granted the petition of a certain woman and granted her an audience, even though it was not entirely certain that such a fraud had been committed. However, apart from the cases of fraud in which his client was involved, it must nevertheless be maintained that the benefit of a new hearing is not to be denied, because of the manifest nullity of the judgment, which has been demonstrated in the meantime. Therefore, he recalls that this is to be done according to the disposition of the Council of Trent, in session 24, chap. 1, on the Reform of Matrimony, which declares that marriages contracted before two witnesses and the proper parish priest are to be considered null and void, and that such marriages cannot be validated at any time, unless the proper form of reconciliation is again employed, as stated by Scavini, *theol. mor.*, no. 878, question 2; Sánchez, *de Matr.*, *lib.* 3, on dispensations, 19; Schmalz, *Ius Canon.*, *lib.* 4, vol. 3, no. 134; Reiff, in *lib.* 4, decrees, chap. 3, no. 55; Benedict XIV, in *Syn. Dioec.*, *lib.* 13, chap. 23, in the Constitution *Redditae nobis*; a few years ago, and in the letter to the Archbishop of Oan.

For this purpose, the proper parish priest is the one in whose parish one of the spouses has his domicile, or quasi-domicile. Domicile, it is said, is acquired by taking up residence in a place with the intention of remaining there permanently; quasi-domicile, on the other hand, is acquired by residing in a place with the intention of residing there for the greater part of the year, as stated by Reiff, *ius can.*, un. *lib.* 2, title 2, § 2, no. 17. And since neither Antonia nor Antonius had a domicile, and indeed, there was no evidence of a long-term residence on the part of either of them, their marriage was therefore invalid.

Although, it is added, according to the disposition of canon law, a son can choose a different domicile or quasi-domicile for himself, it cannot be denied that, as long as the contracting parties have not demonstrably proven their domicile or quasi-domicile.

[*Latin ed. p. 324*]

324. Marriage establishes a domicile, and this is to be considered as residing with the respective parents at that time. However, he adds that it is not possible to assert the validity of the marriage, based on this quasi-domicile, which the betrothed did not, at that time, actually acquire. For, as Benedict XIV testifies in the cited Constitution *Paucis* and the letter

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to the Archbishop of Ghent, in order that a place may be considered as a quasi-domicile, for the purpose of validly contracting marriage there, it is necessary "that, before the marriage is contracted, he who has resided there should have lived in that place for at least one month." Therefore, it is not surprising that the Sacred Congregation has not once, nor twice, declared a marriage null, due to the lack of a long stay in a place that would demonstrate that the contracting parties intended to establish a domicile or quasi-domicile there, as the Sacred Congregation itself demonstrated in Mechlin, on May 4th, July 20th, and September 14th, 1878 (1), in which it declared a marriage null due to the lack of a continuous stay of one month in the city of London by the spouses. Since, therefore, Benedict XIV established that a residence must be held for thirty days before the marriage is contracted; and since the betrothed only resided together for seven days, both before and after the marriage, in the city of P., the Advocate also argued that the notion of a quasi-domicile evaporated into thin air, and therefore, the marriage should be declared null. Furthermore, the Advocate continues, neither Antonia nor Antoninus had a quasi-domicile in the city of P., because Antonia was being educated in the monastery of Vallis Viridis, while Antoninus was dedicating himself to studies at the University; indeed, Antonia left the monastery on June 25th, 1849, as attested by the Prior of the monastery, and with no intention of returning there. The same can be said of Antoninus, who not only faced dangers at the University, but also obtained academic degrees; therefore, he should rather be considered as having resided in the city of P. for the sake of recreation. From these facts, and from the fact that Antoninus was eager to celebrate the marriage, it is manifest that... (1) Compare this question in Volume XL, page 542.

[*Latin ed. p. 325*]

MATRIMONII 325 holds that, in the summer of the year 1849, the aforementioned [person] served in the city of P., which led him to consider returning to his studies. However, the law states that a person who leaves a city loses the status of inhabitant, even if they return to live there; because, if someone returns to live in a place, they are no longer considered the original inhabitant who was completely extinguished by the departure: Gratian, Disputations, Book 1, chapter 5, section 92, number 16; Alexander III, Decrees, number 43, number 5; L5. Therefore, since Antonia, whom Antoninus, if they had considered education as their domicile, returned to their homeland, and since the original status of inhabitant was extinguished, it follows that at the time when they arrived there to contract marriage, they could not be considered to have established a domicile, either jointly or individually, and therefore, it is correct to judge that no marriage was validly initiated. Moreover, three days after the betrothal, they went to Burgium, from which it is most clearly shown that they did not even intend to acquire

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a new domicile or quasi-domicile; for it is a fundamental principle of law that a sudden departure after marriage indicates a lack of intention on the part of the contracting parties: Benedict XIV, in Notifications, volume 2, number 13, number 8 and 9; Natalis Alexander, Theology, Moral Dogma, book 2, chapter 2, article 2. Finally, it can be objected in vain that the betrothed were joined by a presbyter delegated by the Vicar General of the city of P., since, in the sense of the Council of Trent, the term "Ordinary" refers to the diocesan bishop, or his Vicar General, but not to a bishop of a foreign diocese: Lessius, De Iurisdictione et Juramentis, book 4, chapter 2; De Ieiunio, doubts, number 7, number 46. But neither of the contracting parties belonged to the diocese of P. Therefore, it must be concluded that this cannot be used to support the validity of the contested marriage, and therefore, the judgment of the Court of C. must be overturned by the Sacred Congregation.

DEFENSE OF THE SACRED BOND. The defender of the marriage bond, addressing the first point of his argument, sought to demonstrate that there is no basis for appeal in this matter, because, since the controversy has been resolved by consistent judgments, the matter is closed.

[*Latin ed. p. 326*]

326. The marriage has passed through judgment; and this must be deduced either from § 304, 326 of the Gregorian Code, to which adherence is prescribed, and from which appeal to the third judicial seat is admitted only in the case where the sentences of the first and second grades are different. According to the norm of this code, cases are now handled in the ecclesiastical tribunals and in the Sacred Congregations. However, the decree of St. Gelasius, which the opponent has presented, must be understood in such a way that the Holy See indeed has the right to accept appeals from the entire world, if the good of the faithful requires it; nevertheless, it is not necessary to appeal to the Holy See, if the cause has been duly judged before the tribunals of the Bishops, and has been decided by a double, conforming judgment. Otherwise, it would be absurd that a sentence pronounced by the tribunal of the Ordinary could never be executed, which the defender argues is false, since it is clear that Bishops, after two conforming sentences against the validity of marriage have been pronounced in two judicial seats, can give the spouses the power to contract new marriages. Furthermore, the difficulty arising from the Benedictine Constitution *Dei Miseratione* should not be given undue weight, since it is stated therein that matrimonial sentences never become res judicata. Indeed, it is clear that this Constitution refers only to those sentences which declare the nullity of marriage, and not to those which proclaim its indissolubility (1). However, even given that, according to Benedict XIV in the aforementioned passage, an appeal to the Holy See can be interposed, even when there is a double, conforming sentence declaring the validity

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of marriage; nevertheless, such an appeal is only permissible in the case where there is some legitimate and just cause that requires it. Nevertheless, he contends that it is not a true appeal, but rather a restitution in [the matter]. (1) Marriage must be indissoluble; therefore, if it happens that it has been declared dissoluble by human judgment, it is considered best, by privilege, that the question be subjected to trial again and again, even after two conforming sentences, but for the nullity of the marriage.

[*Latin ed. p. 327*]

MATRIMONII 327, as can be seen in the document concerning Matrimony, dated September 1, 1868, in Lima. Furthermore, referring to the Apostolic Letters, *Multis gravissimis*, issued by the Most Blessed Pope Pius IX on January 28, 1864, concerning the Sicilians, and published by the aforementioned Royal Legation, it is noted that the praised Pontiff did not prescribe anything that is contrary to common law, and therefore, his words must be understood according to the general rule, which admits of appeal only in cases where the judgments are only different. However, it is clear that the Pope's intention was that matrimonial cases should be handled according to the procedure outlined in the Benedictine Constitution, and this is clearly evident in the aforementioned Apostolic Letters. (1) After these remarks, the defender of marriage proceeds to the second point of his argument, and after stating that the benefit of the law is granted for the purpose of rectifying fraud and errors that may occur in contracts or judgments, he concludes that such a benefit of the law should be denied in this case, because there was no fraud and no error involved that needs to be remedied. Furthermore, addressing our question more directly, he points out that matrimonial cases, which have already passed into a final judgment, can only be reopened and brought back into judicial controversy when, by the grace of God, a new fact is revealed that was not presented or was ignored, according to § 11 of the Benedictine Constitution. Based on these legal principles, he argues that it is evident from the facts that no document was presented that was ignored or not presented; no argument has been put forward to show that such documents were disregarded or that canon law was violated in the initial proceedings. On the contrary, it is shown that everything was carried out properly according to canonical prescriptions, and therefore, the woman's pleas for the restoration of her rights should be rejected. Finally, addressing the third point, the defender of the Sacrament declares that, for a marriage to be validly contracted, it is sufficient that the parties have a domicile, and that they are members of a family, and (1) You have these Letters in Vol. III, p. 177.

[*Latin ed. p. 328*]

328 Marriages do not require that the parties be of a certain age. Nor is it

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necessary to establish quasi-domicile by applying rules derived from civil law, but rather the decrees of sacred canons must be kept in view: for it is one Church that establishes the laws concerning marriage, as taught in the *Institutes of the Devout*, Canon 2, Tom. 2. Subsequently, inquiring about the requirements for establishing quasi-domicile, he cites the words of Pignatelli, Tom. 5, cap. 79, *Consilia*: there, he states that to establish a quasi-domicile, that is, a domicile of appearance, not only is a physical presence or connection to a place required, but also the intention of remaining there. From this, he concludes that there is an equivocation in the materialistic and, properly speaking, in the notion of habitation. Finally, he recalls the Constitution of Benedict XIV, issued a few days prior, in which a period of one month is established, noting that those who interpret the words of the Pontiff as if mere residence for a month, without the intention of inhabiting, is sufficient to acquire a quasi-domicile, materially speaking, are mistaken; for the Pontiff speaks only of cases in which it cannot otherwise be ascertained whether the intention of remaining exists, and therefore the period of residence serves as a kind of indication by which the intention may be recognized. Given these things, he proceeds to argue that such a term is designated to make a presumption, so that if the intention is not known from any other source, it may be presumed from that month (1). Based on these legal principles, he seeks to demonstrate that Antonina came to the city of P. and entered into marriage there with the intention of remaining, as several witnesses attest; therefore, she acquired the right to a quasi-domicile and validly entered into marriage. However, even if such an intention were not established, he argues that, since nothing is presented to the contrary to prove the opposite, it can be said that she acquired a quasi-domicile, based on the fact that the betrothal was delayed for a period of time, as established by Benedict XIV, in order to create a presumption in favor of domicile in cases of doubt. For it is certain that the marriage was celebrated on October 25, 1849; and it is certain that the bride came to the city of P. (1). See Vol. XI, page 567, regarding the doctrine of domicile or quasi-domicile for the validity of marriage.

[*Latin ed. p. 329*]

MATRIMONII 329, die 30 Septembris; hence, it is established that, for a period of 25 or 26 days prior to the wedding, she remained there. This is not only evidenced by the assertion of the bride, but also by the testimony of the Official of Health of the port of the city in question, who, among the maritime travelers, lists ”Antoing” under the date of September 30th. Therefore, having admitted that Antoing remained in the city of P. for a period of 25 or 26 days prior to the marriage, it cannot be doubted that she acquired a domicile, or quasi-domicile, there, since the month mentioned by the Pontiff is not to be taken as strictly defined. Consequently, it is futile to argue, based solely on the subsequent departure of the spouses

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after the wedding, that they did not intend to remain in the place where they were married (1). For, at what time could it happen that they were compelled to leave due to some unforeseen circumstance, even though the intention to remain in the place where the marriage was celebrated was not absent from them? However, the cause of the departure was present in the matter itself, namely, the duties of piety and reverence to which the groom was bound towards his parents, one of whom was already suffering from a long-standing infirmity, and the groom had obtained half of his patrimony. Therefore, since the existence of a legitimate cause for departure cannot be doubted, and it flows spontaneously, this cannot provide any argument for excluding the intention to reside in the city of P. as a domicile or quasi-domicile. After these considerations, proceeding to the question of Antoing's domicile or quasi-domicile, it is certain that this suffices for the marriage: since it is established in law that a marriage celebrated in a place where one of the spouses had a domicile or quasi-domicile is valid. As Antoing had a domicile in the city of P., she fulfills all the requirements of the scholastic, medical, and judicial definitions of quasi-domicile, namely, for those who do not reside temporarily, but for the greater part of the time, in a certain place (1). Benedict XIV, in the Constitution "Paucis," established nothing regarding a delay to be made after the marriage for the purpose of acquiring a quasi-domicile. Therefore, Fagnan considers this delay to be "like a scaffolding," to ascertain the intention, not to acquire a quasi-domicile.

[*Latin ed. p. 330*]

330. MARRIAGE inhabitants. It is commonly accepted that residence suffices for establishing domicile, provided that the individual resides in a place for a significant period, due to some office or occupation. Thus, Benedict XIV, Notitia 15, 32, 83; and following him, St. Alphonsus, lib. 1, n. 156; lib. 2, n. 115; Currier, Bouvier, Vecchiotti, Scavini, lib. 3, Tract. 11, Disp. 3, Cap. 1. This rule cannot be ambiguous in law, as Antoninus, acting as a scholastic and as a manager of his family's business with the consent and approval of his father, resided in the city of P. not for one or two years, but from the year 1837 until the year 1849 and beyond. Therefore, even if he departed each year to visit his parents, he always intended to return, and for such a short time that it could be said that he had merely gone to the countryside in his homeland. For Antoninus, besides the reason of studies, resided in the city of P. in order to dedicate himself to the management of his father's business; and he chose to reside there because of his own private desires. His father confirmed his desire to establish a domicile there, for the reason that he might, by residing in a large city, increase the family's reputation, and ennoble it with the society of distinguished families, since the family was already rich. He maintained that this reason was sufficient; and it can be argued that Antoninus did not intend to acquire a domicile for

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himself in the city of P. Finally, to the objection raised by Gratian, that any domicile is lost by departure to the homeland, the response is that this rule applies to those who depart with the intention of leaving the city, but not to those who intend to return, as in the case of Antoninus, who, whenever he was with his father, always had in mind the intention of returning to the city of P. And this is even more so, because it rarely happened during the summer, and for such a short time that it seemed as if he were going to the countryside. Furthermore, it can also be inferred that he always intended to return from the fact that he had a house in the city of P. It is also noted that this occurred in the year 1849, and a lease agreement exists with the notary, from which it appears...

[*Latin ed. p. 331*]

MATRIMONII 331: This marriage contract, having begun in the month of August 1849 and continuing until the month of August 1850. Considering these facts, the arguments presented for the existence of a quasi-domicile, a requirement for the validity of marriage, are so numerous and weighty that there can be no doubt about them. Therefore, it is left to the prudence and doctrine of the E.E.P.P. to resolve the following doubts. I. Is there a basis for an appeal in this case? And if so, to what extent, positively or negatively? II. Is there a basis for restitution? III. Should the judgment of the Court be upheld in this case?

RESOLUTION: The Sacred Congregation, having considered the matter on May 14, 1881, judged as follows:

I. Negative.

II. Negative.

III. Provisionally, based on the foregoing.

CONCLUSIONS:

I. Marriage judgments, even if two are in agreement regarding the nullity of the marriage, never become res judicata, due to the privilege granted to matrimonial causes, because marriages ought to be indissoluble.

II. From Constitution *Dei Miseratione*, § 11: Judgments favorable to marriage, which have already become res judicata, can then be brought back into judicial controversy, if a new fact is revealed which was not presented or was ignored.

III. Since restitution *in integrum* is a benefit granted by law to prevent fraud and errors in judgments and contracts, it is generally not granted unless the judgment has been overturned.

[*Latin ed. p. 332*]

332. The injustice of a marriage annulled, whether based on false documents or on a law disregarded and openly violated. I. For a marriage to be validly contracted, it suffices to have a *domicilium* (fixed residence); in

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establishing this, the civil laws are not to be considered, but rather the sacred canons: and since it is the duty of the Church to establish the laws that pertain to marriage, V. A marriage is validly contracted before the proper pastor, who becomes such through *domicilium* or quasi-domicilium. VI. For a *quasi-domicilium*, acquired for the purpose of marriage, two things are required: actual residence in the parish, and the intention of continuing that residence for the greater part of the year. VII. However, in cases of doubt, when it is not sufficiently clear whether there is an intention of remaining for the greater part of the year, presumptions must be used. VIII. A sufficiently strong presumption of the intention of remaining exists if the person contracting the marriage has resided in the place where the marriage is celebrated for at least one month before the marriage is contracted. IX. In this case, it appeared that there was a *quasi-domicilium*, and two sentences favorable to the validity of the marriage were pronounced in the first instances, in accordance with the canonical prescriptions; so that they rightly passed into a final judgment, against which, therefore, no appeal nor restoration to the previous state was granted by the Sacred Congregation.

MASS FOR THE PEOPLE. On April 9, 1881. Through summary petitions.

SUMMARY OF THE CASE. The Ordinary C. presented to the Sacred Congregation, on November 13th of the aforementioned year, a supplicatory libellus (petition), stating that in the parochial churches of his diocese, on feast days, the Mass was celebrated by the pastor, or vice-pastor, or even by another priest.

[*Latin ed. p. 333*]

MASSES FOR THE PEOPLE 333 are now solemnly celebrated with singing, and among the solemnities of the Mass, also the reading of the Holy Gospel. Furthermore, the faithful, firmly believing that it is always offered for them, readily gather to hear it. However, it is applied for the people only when the Parish Priest sings it, who, often preoccupied with numerous concerns, is frequently compelled to entrust this duty to another priest. Hence, the Bishop, wishing that the faithful should not remain so long in this erroneous belief, and also noting that if they were to learn this, they would be greatly distressed, and would no longer attend so diligently to hear that Mass, asks the Sacred Congregation: 1. Whether the aforementioned urgent custom should be considered a sufficient canonical reason for the Parish Priest to delegate the celebration of the Mass for the people to another priest, in his place. 2. Assuming that it is not a sufficient reason, whether, nevertheless, permission may be granted for this purpose.

A concise discussion:

It seems certain and beyond all doubt that Parish Priests are bound by

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divine law to offer the Mass for their faithful. This is expressly stated in the Council of Trent, Session 23, chapter 1, concerning Reform: "Since it is a divine command that all to whom the care of souls has been entrusted should acknowledge their flock and offer sacrifice for them, etc." It is manifest from numerous Sacred Congregations, and especially from the Pistorian and Praten decrees of February 24, 1699; which Pope Innocent XII fully confirmed with his Apostolic Letters on April 24, 1699, as well as from the Constitution *Cum semper* of Pope Benedict XIV, dated August 14, 1774, and from the Encyclical Letters of the Most Beloved Pope Pius IX, of May 3, 1858. Furthermore, this obligation with which Parish Priests are burdened is personal, as canonists and theologians teach. Among others, let Pitonius be heard, who in *Pisae Eccles.* 142, number 15, says: "On all Sundays and holidays..."

[*Latin ed. p. 334*]

334 MISSÆ PRO POPULO "hebdomadam... tenetur Parochus celebrare per seipsum, "nisi ex iusta causa impeditus reperiatur," et infra n. 17 addit: "quod ista celebratio Missae parochialis sit adimplenda per Parochum personaliter, probat non solum regula generalis, quod Parochi teneantur per seipsos, non autem per substitutos adimplere omnia munera parochialia, ut tradit Fagnanus in cap. Extirpandae §. Qui vero n. 4 de Praeb, et S. C. C. in Mechlinien. 25 Septembris 1847." Quibus hucusque dictis serio expensis atque ponderatis, videretur, non solum quod dicta consuetudo ratio sufficiens non sit alteri committendi applicationem Missae pro populo, verum etiam nec causa rationabilis indulgendae in proposito gratiae, et tam sanctum ac rationabilem canonum rigorem relaxandi. Quin aliquid valeat quod in contrarium adducit ur, pia nempe fidelium credulitas ac timor desistendi ab illa Missa audienda, si id ipsi perscriberent. Quandoquidem leves ob hasce causas neque excusandus videretur Parochus a satisfaciendo onere, quod eidem personaliter incumbit, neque relaxanda lex, quamugiter sancta haec Apostolica Sedes servatam voluit. Praeterquam quod si fideles doceantur nihil ab ipsis amitti, si Missa privata Parocho celebretur, atque quod non leve bonum eisdem obvenire adsistendo Missae cum cantu, atque explanationi verbi Dei, oppositus timor in vanum timorem refundi videretur. E contra perpendas quod licet Parochorum obligatio Missae sacrificium pro populo applicandi, ex divino praecepto manare videatur, tamen certum et indubium est Parochos, si legitime fuerint impediti, posse huic oneri per alios satisfacere, quemadmodum docent resolutiones editae in Viterbien. 3 Martii 1708 ad 2 dub., Comen. 2 Maii 1720, Policastren. Dubia super Applicatione Missae Parochialis 14 Decembris 1872 ad 3 Dub., et S. C. de Propaganda Fide diei 14 Martii 1843. Quod a fortiori tenendum videretur si de animarum bono, prout in themate ageretur; praetermisso namque quod fideles in falsa persuasione manerent, illud

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timendum quod si hoc rescirent, iidem celebrationi huius Missae...

[*Latin ed. p. 335*]

MASSES FOR THE PEOPLE: 335, and those who had ceased to attend the explanation of the Gospel, although they were strongly urged to do so, as the Bishop reports, solely because they believed that the Mass was being offered for them. However, in the hypothesis that sufficient reasons were not considered adequate to justify the application of another Mass for the people, the Eminents and Prelates decided that the matter was to be deferred to determine whether the case warranted granting this favor, as the Bishop C. humbly requested. RESOLUTION. The Sacred Congregation, under the date of April 9, 1881, responded: To the Most Reverend I. II. Ex Negative. It is not advisable. WHEREFORE: I. The application of Masses for the people is to be considered so personal, that the Sacred Congregation has often condemned as legally irregular the custom of having this obligation fulfilled by another. II. For from the Council of Trent it is prescribed to all those to whom the care of souls has been entrusted, and not to others, to know their flock and to offer sacrifice for them, unless they are legitimately hindered. III. Therefore, given the opportunity, the Sacred Congregation has decided that such pastors of souls should be urged to personally undertake all parochial duties, especially the Mass for the people. IV. Added to this, there have been circumstances that, in the judgment of the Eminents and Prelates, did not constitute a just cause for the pastors to allow others to fulfill the obligation personally imposed upon them, according to the general rule.

[*Latin ed. p. 336*]

336 FROM THE SACRED CONGREGATION FOR THE RITES, a decree concerning the confirmation of the cult rendered to the Servant of God Emerico de Quart, Bishop of Augsburg, now Blessed, in Aosta, which has been practiced from time immemorial. The Most Reverend Bishop of Augsburg, together with the clergy of his diocese and the municipal council of Quart, and also the Most Reverend Bishop of Ivrea, having petitioned, and while the Eminent and Reverend Cardinal Aloysius Oreglia, from the Holy Stephen, the proponent of the aforementioned cause, was present at the Ordinary Assemblies of the Sacred Rites held today in the Vatican, the following question was proposed: Whether the judgment rendered by the Most Reverend Bishop of Augsburg concerning the cult, practiced by the aforementioned Servant of God from time immemorial, or concerning the case excepted from the Decrees of Pope Urban VIII, is to be confirmed in the case and for the purpose in question. Therefore, the Eminent and Reverend Fathers entrusted with safeguarding the Sacred Rites, after mature deliberation, and having heard the voice and the written opinion of the Reverend Father Doctor Lawrence Salvati, Promoter of the Holy Faith, judged that it

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should be answered: Affirmative, that is, the judgment is to be confirmed. July 12, 1881. These matters, through the Most Reverend Lord Augustine Caprara, Assessor of the Congregation of Sacred Rites, having been faithfully reported to His Holiness Pope Leo XIII, His Holiness deigned to ratify and confirm the Rescript of the aforementioned Congregation on the 14th day of the same month and year.

D. CARD. BARTOLINI, Prefect of the Sacred Rites.

[Signature] Placidus Ratti, Secretary of the Sacred Rites.

[*Latin ed. p. 337*]

337. ENCYCLICAL LETTER in which the Most Holy Pope exhorts the Bishops of Italy to strive so that the Catholic Faith may not be destroyed, especially by fostering Catholic societies, by appointing suitable ministers of God in virtue and knowledge, and above all, by paying close attention to the seminaries of clerics.

TO THE VENERABLE ARCHBISHOPS, BROTHERS, AND OTHER ORDINARY BISHOPS OF PLACES IN THE ITALIAN REGION.

LEO XIII.

Venerable Brothers, Greetings and Apostolic Benediction.

Although We, by reason of the authority and extent of the Apostolic office, embrace the entire Christian commonwealth and each of its parts with the greatest possible care and charity; nevertheless, for a particular reason, Our concerns and thoughts are now directed towards Italy.

In these concerns and thoughts, We perceive something more profound, both human and divine; for We are anxious and concerned about the eternal salvation of souls; and all Our endeavors ought to be more firmly fixed and directed towards this goal, inasmuch as We see it to be opposed by greater dangers.

Such dangers, if they have ever been great in Italy, are certainly the greatest at this time, when the very condition of public affairs is greatly endangered by the calamitous state of religion. And for this reason, We are moved more strongly, because special bonds of connection exist between Us and Italy, in which God has placed the dwelling of His Vicar, the seat of truth, and the center of Catholic unity.

Indeed, We have often warned everyone to be on guard, and each one should understand what are his duties in such grave matters. Nevertheless, as evils increase, We wish to direct Our mind more diligently towards you, Venerable Brothers, and, having considered the common good, to fortify the minds of the people with greater vigilance, and to strengthen them with all defenses, so that the most precious treasure of all, the Catholic faith, may not be destroyed.

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*Acta, Vol. XIV, p. 14.

[*Latin ed. p. 338*]

338 An Encyclical Letter. A most pernicious sect has long been established in Italy, the authors and leaders of which do not conceal nor dissimulate their intentions, and which, openly declaring its enmity to Jesus Christ, seeks to utterly destroy the Christian institutions among the people. – It is unnecessary to detail here how far this evil has progressed, especially since, Venerable Brothers, the wounds and ruins inflicted upon faith and morals are already before your eyes. – Among the Italian people, who have steadfastly and faithfully remained in their ancestral religion at all times, the freedom of the Church is now diminished throughout the land, and day by day it is being pressed with greater urgency to eradicate that form and, as it were, that Christian character by which the Italian people have always been rightly distinguished. Religious congregations have been suppressed; the goods of the Church have been confiscated; marriages contrary to Catholic rites have been permitted; and no authority of the Church has been left in the education of youth. – There is no end, nor any limit, to this bitter and grievous war waged against the Apostolic See, a war which causes the Church incredible suffering, and which has driven the Roman Pontiff into the utmost distress. For, being deprived of his civil authority, he has been forced to concede power to foreign jurisdictions. The city of Rome, the most august of Christian cities, is exposed and is evident to all enemies of the Church, and is defiled by profane innovations, with schools and temples widely dedicated to heretical rites. Indeed, it is said that this very year, envoys and leaders of the most inimical sect against Catholic affairs will come here, to a certain assembly and gathering, to provide protection. It is sufficiently clear from this choice of location what their purpose is: namely, to fulfill their rancid hatred against the Church, and to incite the flames of war against the Roman Pontiff in his very seat, bringing the destructive fires of war ever closer. – There is no doubt that the impious efforts of men will, at some time, be overcome by the Church. However, it is certain and well-known that they seek to achieve this by attacking the entire body of the Church, together with its Head, and, if possible, to extinguish the religion itself. This, it would seem incredible to those who profess to be most devoted to the Italian name, for the Italian name, joined with Catholic faith, would necessarily be deprived of the source of its greatest benefits. For, if the Christian religion has offered to all nations the best safeguards for salvation, the sanctity of rights, and the protection of justice; if it has everywhere subdued the blind and reckless desires of men by its virtue, and has been a companion and helper of all that is honest, laudable, and great; if it has restored various orders of society, and diverse members of

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the state, to perfect and stable harmony everywhere, then—

[*Latin ed. p. 339*]

ENCYCLICAL LETTER 339: "It has bestowed benefits upon the Italian people more abundantly than upon others. – Indeed, this is the fault and disgrace of many, who claim that the Church harms and damages the well-being or progress of the state; and who consider the Roman Pontificate an enemy to the prosperity and greatness of the Italian name. But these complaints and absurd accusations are openly refuted by all the monuments of past times. For, in truth, Italy owes most to the Church and to the Supreme Pontiffs, because they have spread its glory among all nations, because it has not succumbed to repeated barbarian invasions, and because it has repelled the immense attacks of the Turks, and because it has long preserved freedom in many respects and in a legitimate manner, and because it has enriched its cities with numerous and immortal monuments of the arts. – And it is no small praise to the Roman Pontiffs that they have always preserved the Italian provinces, with their diverse customs and manners, united in common faith and religion, and have freed them from all the most harmful discord. And in times of great peril and calamity, the public affairs have not infrequently been brought to the brink of ruin, unless the Roman Pontificate has been beneficial to their salvation. – And it will not be less beneficial in the future, provided that the will of men does not obstruct its power, nor impede its freedom. For that beneficial power, which is inherent in the Catholic institutions, because it spontaneously arises from their very nature, is immutable and perpetual. Just as the Catholic religion encompasses all times and places for the salvation of souls, so too, in civil matters, it extends everywhere and always, offering and developing benefits for the good of mankind. But when so much has been taken away and so many goods lost, the greatest evils follow: for those who hate Christian wisdom, whatever they may say against it, lead the state to ruin. For there is nothing more suitable in the teachings of these people to inflame violent passions and to stir up the most pernicious desires. Indeed, in those things which contain knowledge and science, they reject the heavenly light of faith; and when this is extinguished, the human mind is often led into error, and cannot discern the truth, and easily falls into a base and materialistic worldview. They despise the eternal and immutable order of morals, and they disregard God as the supreme lawgiver and judge; and with these foundations removed, it follows that, without a sufficiently suitable sanction of laws, all norms of life are taken from the will and judgment of men. In the state, from the excessive freedom that they proclaim, license is born; license is followed by the disturbance of order, which is the greatest and

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most harmful plague of the state."

[*Latin ed. p. 340*]

340 ENCYCLICAL LETTER. Truly, there was no more deformed spectacle, nor more miserable condition of a state, than that in which such doctrines and such men could for a time flourish. And were it not for recent examples, it would seem to exceed belief, that men – inflamed with audacity and wickedness – could plunge into such ruin, and, while retaining the name of liberty for mockery, indulge in slaughter and arson. But if Italy has not yet felt these terrors, we must first attribute it to the singular grace of God; and then we must also determine that it is because the Italian people, by far the largest in number, have persevered diligently in the Catholic religion, so that the licentious opinions, which we have mentioned, have not been able to dominate. But if these defenses, which religion provides, are broken down, Italy would immediately be plunged into those very calamities which have at times afflicted the greatest and most powerful nations. For it is necessary that the outcome of doctrines be similar; and since the seeds are in the same vice, it cannot be that the fruits will not be entirely the same. Indeed, perhaps the Italian people would incur even greater punishments for the violation of religion, because with ingratitude they accumulate guilt of perfidy and impiety. For it was not by chance, nor by a slight human will, that Italy was given, from the beginning, a share of the salvation offered through Jesus Christ, and that it possesses the See of the Blessed Peter within its bosom and embrace, and that, over a long course of years, it has enjoyed the greatest and most divine benefits, which flow spontaneously from the Catholic religion. Therefore, it should greatly fear what the Apostle Paul thrice warned against with threats: "For the earth which drinks in the rain that comes early and often, and bears herbs fit for those by whom it is cultivated, receives blessing from God; but that which bears thorns and thistles is worthless and near to being cursed, whose end is to be burned" (1). May God forbid that such a great dread should come upon us; and let all consider seriously the dangers which, in part, arise from those who, serving not the common good, but the interests of sects, exercise hostility towards the Church. If they were wise, if they held true charity for their country, they would certainly not distrust the Church, nor would they, led by unjust suspicions, attempt to undermine its native freedom; rather, they would turn their efforts to defending and assisting it; and above all, they would provide that the Roman Pontiff should recover his rights. For the contention undertaken with the Apostolic See harms the Church all the more, and the safety of Italy all the less (1).

(1) Hebrews VI, 7, 8.

[*Latin ed. p. 341*]

ENCYCLICAL LETTER 341, concerning matters that will be beneficial.

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On this matter, We have declared elsewhere Our sentiments: "Say, that the public affairs of Italy cannot flourish, nor enjoy lasting tranquility, unless the dignity of the Roman See and the liberty of the Supreme Pontiff are respected, as all laws demand." Therefore, since We desire nothing more than that the Christian cause be preserved, and since We are moved by the present divisions among the Italian people, We earnestly urge you, Venerable Brothers, more than ever before, to contribute with your zeal and charity to finding remedies for so many evils.

And first of all, instruct the people with the utmost care about the importance of possessing the Catholic faith, and about the great necessity of defending it. For, since the enemies and adversaries of the Catholic name, in order to more easily deceive the unwary, simulate many things, it is of great importance that their hidden designs be brought to light, so that, when it is known what they truly intend and for what cause they contend, the hearts of Catholics may be stirred, and the Church, the Roman Pontiff, that is, their own salvation, may be defended vigorously and openly. Many, up to this day, have shown virtue, as much as they could, but their actions have been somewhat slow, or their efforts remiss, either because they were unaccustomed to such matters, or because the magnitude of the dangers was not sufficiently perceived. Now, however, having experienced the times, there could be nothing more pernicious than to tolerate the long-standing wickedness of the wicked, and to leave the Christian cause exposed to their desires for a longer time. Indeed, those who are more prudent than the children of light have already dared much: fewer in number, but stronger in cunning and resources, they have already kindled great fires of evil among us. Therefore, let those who love the Catholic name understand that the time has come to try to do something, and in no way to surrender themselves to idleness and apathy; for no one is more quickly oppressed than he who, with careless security, rests. Let them see how the noble and industrious virtue of those ancients feared nothing: it was through their labors and their blood that the Catholic faith flourished. You, Venerable Brothers, rouse those who are inactive, urge those who are hesitant: by your example and authority, strengthen all to constantly and courageously perform the duties by which the action of the Christian life is sustained.

To foster, increase, and awaken this virtue, it is necessary to care for and provide that societies, in number, in agreement, in accomplishing things, may flourish and expand widely, with the greatest purpose of preserving and promoting the studies of the Christian faith and other virtues. Such are the societies...

[*Latin ed. p. 342*]

342 ENCYCLICAL LETTER concerning associations of young people, guilds, and other organizations which are either formed by groups of

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Catholics for specific purposes, or for the relief of the poor, for the preservation of religious traditions on feast days, and for the education of children from the lowest classes; and many others of a similar nature. And since it is of the greatest importance for the Roman Pontiff, in governing the Church, to be and to appear free from all danger, annoyance, and difficulty, as far as possible, by acting, praying, and striving, solely for the cause of the Pontiff; and to not rest until true liberty is restored to us, which is not only necessary for the good of the Church, but also, according to the course of events in Italy, and for the tranquility of Christian nations, is bound together by a certain bond. Furthermore, it is of great importance that salutary writings be published and widely disseminated.

For those who are most hostile to the Church are accustomed to combat with published writings, using them as the most suitable weapons for doing harm. Hence, this terrible flood of books, and these turbulent and unjust periodicals, whose mad impulses are restrained neither by laws nor by decency! Whatever has been done in recent years through sedition and disturbances, they defend as having been done justly; they conceal or distort the truth; they attack the Church and the Supreme Pontiff with daily curses and false accusations; and there are no opinions, however absurd or pestilent, which they do not seek to spread abroad. Therefore, a diligent effort must be made to prevent this great evil, which grows wider every day; for it is necessary to instruct the people severely and earnestly, so that they may be vigilant and prudent in their reading, and may carefully preserve religious principles.

Furthermore, writings must be opposed with writings, so that the art which can do so much harm may be transferred to the benefit and salvation of people, and so that remedies may be provided from which the poisons of evil are sought.

In this regard, it is desirable that some system be established in each province for publicly demonstrating, and widely disseminating, what are the duties of each Christian towards the Church, through frequent writings, and, if possible, daily publications. In the first place, the outstanding merits of the Catholic religion for all nations should be presented; the virtue of its prayers, which are most prosperous and salutary for both private and public affairs, should be explained; and it should be made clear how important it is to quickly restore the Church to that position of honor in the state which it so strongly deserves, both by its own divine greatness and by the public benefit it brings to the nations.

For the sake of these things, it is necessary that those who are inclined to write should possess many things: namely, that they should all, in series...

[*Latin ed. p. 343*]

ENCYCLICAL LETTER 343: They should determine what is most important, and establish it with certain judgment, and they should not omit

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anything of those things whose useful and desirable knowledge seems apparent. Maintaining gravity and moderation in their speech, they should reprehend errors and vices, but in such a way that the reprehension lacks bitterness, and respect should be shown to individuals. Then, they should employ clear and evident prayer, which the multitude can easily understand.

But all those who truly and sincerely desire the flourishing of both sacred and civil affairs, defended by human ingenuity and letters, should strive to protect these fruits of literature and intellect with their generosity, and, as each one is wealthier, so much the more should they support them with their resources. To those who devote themselves to writing, such assistance must be entirely provided; without which, either their efforts will have no result, or they will have uncertain and meager results.

In all these matters, if anything hinders our people, if any conflict must be faced, let them nevertheless be bold to present themselves, for there is no cause more just for a Christian to undertake, either hardships or labors, than to prevent the suffering of the religion by the wicked. For the Church has not begotten nor raised up its children so that, when the time and necessity require it, it should expect no help from them, but so that, each of them, preferring the salvation of souls and the safety of the Christian cause to their own leisure and private advantages.

Above all, your concerns and thoughts, Venerable Brothers, should be vigilant in ensuring that suitable ministers of God are properly trained. For while it is a great undertaking for Bishops to devote much effort and study to the proper formation of all youth, it is even more important to labor diligently in the training of clerics, who are the hope of the Church, and who will one day be participants and helpers in the most sacred duties.

Indeed, weighty reasons and many and great virtues, common to all ages, are demanded of priests; but our present age demands even more and greater things. Truly, the defense of the Catholic faith, in which priests should most diligently labor, and which is so necessary in these times, requires not a vulgar or mediocre knowledge, but one that is refined and varied; which includes not only sacred disciplines, but also philosophical ones, and is rich in the treatment of physics and history. For the errors of men are manifold, undermining the very foundations of Christian wisdom, and it is often necessary to contend with the most cunning adversaries, who are persistent in debate, and who astutely seek support from every branch of knowledge.

Similarly, since vice is great and widespread today, a singular...

[*Latin ed. p. 344*]

344 The ENCYCLICAL LETTER most certainly requires that constancy and virtue be preeminent in priests. For they can scarcely escape the habits

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of men; indeed, they are commanded to draw closer to the multitude, fulfilling the duties of their office. And this is especially true in civilized lands, where there is scarcely any restraint, and licentiousness is permitted and unrestrained. From this, it is understood that virtue in the clergy must possess such strength at this time, so that it may firmly defend itself, and overcome all temptations of lust, as well as the dangers and deceptions of example. Furthermore, the ruinous laws enacted against the Church have resulted in a widespread scarcity of clergy; so much so that it is necessary to double the efforts to recruit those who are ordained to the sacred orders of God, and to compensate for the small number with outstanding diligence, study, and devotion. Indeed, they cannot accomplish this effectively unless they possess a steadfast, abstinent, and incorruptible spirit, burning with charity, and always ready and eager to undertake the labors for the eternal salvation of men. But for such duties, a long and diligent preparation is required; for one does not easily or quickly become accustomed to such things. And those, certainly, will live their priesthood integrally and holily, who have cultivated themselves in this manner from their youth, and have progressed so much in discipline that they seem to possess those virtues that have been mentioned, not so much through training as through nature. For these reasons, Venerable Brothers, the seminaries of the clergy rightly claim a large and significant share of your attention, counsel, and vigilance. As for virtue and morals, it is not unknown to your wisdom how much it is necessary to instruct young clerics with precepts and institutions. - But in the more serious disciplines, Our Encyclical Letters – Aeterni Patris – have indicated the best method and reason for study. But since there are many things that have been wisely and usefully discovered in this vast course of study, which it does not behoove to be ignorant of, especially since impious men are accustomed to twist and distort whatever progress each day brings in this field, as if new weapons against divinely revealed truths, make every effort, Venerable Brothers, as much as you can, to ensure that the sacred youth are not only instructed in the investigation of nature, but are also deeply educated in those arts that have a connection with the interpretation or authority of the sacred Scriptures. - We certainly do not ignore the fact that many things are necessary for the excellence of studies; things, however, that are taken away from or diminished in the sacred seminaries of Italy by inopportune laws. - But even in this matter, time demands that, with generosity and beneficence, we provide for the Catholic religion.

[*Latin ed. p. 345*]

ENCYCLICAL LETTER 348. We earnestly desire that the people of Italiam strive to emulate these virtues. The piety and beneficence of their ancestors have admirably provided for such needs; and the Church has been able, through prudence and economy, to ensure that the protection and

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preservation of sacred things are in no way necessary to be entrusted to the charity of her children. But the patrimony of that nation, which is both legitimate and sacred, and which had been diminished by the injustices of past ages, has been dissipated by the storms of our times; therefore, the cause arises anew, that those who love the Catholic name may be encouraged to renew the generosity of their ancestors. The projects of the French, the Belgians, and others, in a cause not dissimilar, are shining examples of munificence, worthy of the admiration not only of their contemporaries, but also of posterity. We do not doubt that the people of Italiam, moved by consideration for the common good, will do all that is in their power, so that they may prove worthy of their ancestors, and may learn from fraternal examples what they should imitate. In these matters which we have mentioned, we certainly place a considerable hope for solace and restoration.

But, as in all endeavors, especially those undertaken for the sake of the public good, it is absolutely necessary to seek the help of Almighty God, whose power extends not only to the will of individual men, but also to the course and fortune of empires. Therefore, we call upon God in the highest prayers, and we pray that He may regard Italiam, so richly adorned and increased by His benefits; and that He may perpetually protect the Catholic faith in that land, which is the greatest good to all, dispelling all suspicions of danger. For this very reason, we implore the Immaculate Virgin Mary, great Mother of God, advocate and helper of the best designs, together with her most holy Spouse Joseph, guardian and patron of Christian nations, to intercede. And with equal zeal, we beseech Peter and Paul, the great Apostles, that they may safeguard the fruit of their labors in the lands of Italiam, and that they may preserve the Catholic name, which our ancestors shed their own blood to establish, among future generations, holy and inviolate. Relying on the heavenly patronage of all these, and as a pledge of divine favor and of Our own supreme benevolence, We impart to you, Venerable Brothers, and to the people entrusted to your care, Our Apostolic Blessing.

Given at Rome, near St. Peter's, on this fifteenth day of February, in the year 1882, in the fourth year of Our Pontificate.

LEO XIII.

[*Latin ed. p. 346*]

346 FROM THE HOLY CONGREGATION OF THE COUNCIL OF BONONIA. DECREE ON THE INTERPRETATION OF A DOCUMENT, dated May 14, 1881. SUMMARY OF THE CASE. In the plenary sessions of January 24, 1857, a heated dispute arose between the chaplains of the main hospital of Bononia and the parish priest, Mary of Charity, within whose parish boundaries the aforementioned hospital is located,

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regarding the right to solemnly conduct the funerals of the deceased in said hospital. The question then raised was: Does the right to solemnly conduct funerals belong to the chaplains of the Hospital of Saint Mary of Life and Death, or rather, does it belong to the parish priest? His Eminence and Lordships responded: Negatively to the first part, affirmatively to the second. (1) (1) As the discerning reader can see, this question has been raised once again: first, it was between the chaplains of the hospital and the parish priest within whose parish the hospital is situated; now, it is being raised between the parish priests of the city, whose parishioners are taken to the hospital while they are ill. First, it was disputed whether the right to conduct funerals solemnly belonged to the chaplains; now, it is being disputed whether this right belongs to all the parish priests whose parishioners die in the hospital. The Holy Congregation had ruled in the first instance that the right to conduct the funeral belonged to the parish priest, who was involved in the dispute. The question now is whether this right belongs to all the parish priests, having been taken away from the chaplains of the hospital, who exercise parochial jurisdiction out of necessity. There are very serious reasons, it is certain, that have led to most hospitals being exempted from the jurisdiction of the parish priests; and the chaplains, with regard to the sick and others who serve the infirm, are, as it were, constituted as parish priests themselves. The reason for this necessity is explained by De Luca in *De Parochia*, book 2, chapter 23, number 11, where he speaks of the Apostolic privileges that grant hospitals exemption from the jurisdiction of the parish priests. "It is rightly granted by the Apostolic See to almost all hospitals, especially those of large cities, both because of the decreasing amount of labor and inconvenience... and also because of the great confusion that otherwise results regarding the administration of the sacraments, which is more frequently done unexpectedly and with..."

[*Latin ed. p. 347*]

INTERPRETATION OF THE WRITTEN TEXT 347. With the passage of time, doubts arose as to whether this type of response favored all the inhabitants of Bologna indiscriminately, concerning the association of the respective parishioners with those who die in said Hospital; or rather, whether such association and the right to funerals belonged exclusively to the Parish Priest of St. Mary of Charity. Therefore, the Parish Priests of Bologna, having presented a petition, addressed the Sacred Congregation of the Council, requesting that it would deign to declare authentically whether the solution should be understood as favoring exclusively the Parish Priest of St. Mary of Charity, or rather, as favoring all and each of the Parish Priests of Bologna, to the exclusion of the Chaplains of the Hospital; or whether the words should be understood to refer to the Parish Priest of St. Mary of Charity, or rather, to the Parish Priest of the domicile of the deceased. Upon

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being requested, the Archbishop issued letters on May 15th, and soon after notified the Prefect, stating the following: "If one were to examine the written text of the decree given by the Papal Bull [presumably referring to a previous decree], it would seem that it could be interpreted as referring to the Parish Priest of St. Mary of Charity. But if Eminence were not to disdain to review the acts of that time, he would find the information from Cardinal Viale, who states: 'But it must be noted that not all the sick who die in this larger Hospital are subject to the jurisdiction of the Curia of St. Mary of Charity,' and that, at that hour, even at night, it would be necessary to summon the proper Parish Priests for each of the infirm, even if they are from different parishes and at a distance, 'which would be impracticable.' From these privileges, a quasi-parochial jurisdiction arises for the chaplains of hospitals, concerning all that is proper for the sick living and dying in the hospital, and in which the aforementioned principle of confusion and impracticability prevails; namely, concerning the sacraments of penance, the Eucharist, and extreme unction; and also concerning the transfer, *De Luca, Discip. 24, n. 18.* However, even with an accidental and temporary change of domicile, those who come to the hospital do not cease to be subject to their own Parish Priests; and the Parish Priests resume their parochial right concerning the funerals of their parishioners; and it belongs to the Parish Priests to solemnly lead the funerals to the public cemeteries, passing processionally with a cross through the territories of other parishes from the hospital to the cemetery. Today, by civil law, the public cemetery has been substituted for burials, whether chosen, or of the family, or for all others; however, the rights of the Parish Priests and Churches concerning funerals, whether solemn or simple, are preserved. *Recole, Vol. III, page 47; Vol. VII, page 161; Vol. VIII, page 528; Vol. X, page 605.*

[*Latin ed. p. 348*]

348 INTERPRETATIONIS RESCRIPTI « Although within the limits of his parish, even if due to infirmity; a firm intention is required to remain in the parish: chapter Is who, concerning burial, in 6. Therefore, I believe that the rights of the other Curial members are also to be protected. From which it can be deduced that it pertains more to the parish priest of the domicile.» Synopsis of the discussion: RIGHTS OF PARISH PRIESTS. And, above all, concerning the favor of actions, or in general, the parish priest of the domicile of the deceased, it should be noted that parochiality is constituted by reciprocal necessity whereby the parish priest is obligated to provide for his parishioners, and the parishioners, in turn, are obligated to receive the sacraments from the parish priest: Clem. Dudum §. Regarding burial, P. Jordan, book 10, title 8, no. 5; Panimeli, decree 5, no. 12, and note 1, no. 10; Prosper, de territor. separ., question 9, no. 6; Rota, decisions 52, no. 10, part 2, diverse, decision 454, no. 7, and decision 1887, no. 3, cor. Coccin, and decision 387, no. 6, and there, Addit. cor. Gregory, Scarfant.

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add. 48, no. 3. Next follows the legal assistance that parish priests have in the funerals of the deceased within the limits of the parish, not by reason of the material location, or residence, or accidental death in the same parish; but by reason of the spiritual office that the parish priest exercises towards his parishioner while he lives, by providing spiritual things; therefore, it pertains only to the parish priest of the deceased person, according to the literal text in chapter 1, De sepult., in chapter 2, ibid., in 6, in the cited Clem. Dudum §, cited, ibid., title; and thus, with one voice, teach the doctors, both ancient and modern: Navarr. in can. Placuit, no. 102, de poenit., distinction 6; Diana, part 9, tract. 7, miscell., resolution 12; Anaclet. in ius canon., book 3, title 28, no. 16; Passer, in de statib., question 187, art. 4, no. 211; Van-espen, iur. eccles., univ., part 2, title 38, chapter 3, no. 7; Pignatell., consult. 151, no. 6, vol. 4, and consult. 73, no. 54; Fargn., de iure patr., part 1, canon 1 and 2, ease 2, no. 9; Rota, in Romana, concerning burial.

[*Latin ed. p. 349*]

INTERPRETATIONIS RESCRIPTI 349, 5 Martii 1703, §. Thus, it is decided, Priolo. Since, therefore, the parish church of Saint Mary of Charity is not bound by the obligation of administering the Sacraments except to its own parishioners before they enter the hospital, it cannot be said that the parish priest of other infirm persons dying in the hospital is, in any way, their proper parish priest, since those who die within the limits of that parish do not thereby become subject to his jurisdiction; nor, therefore, does his pastoral office extend to their funerals, which are entirely dependent on the aforementioned necessity of administering the Sacraments: Ursaia, vol. 1, part 2, disputation 28, nos. 64 and 65; Priolo, decisions, 365, no. 3. And regarding the parish priest within whose parish the hospital is located, that he has no right over the funerals of those who die there, to whom he has not administered the Sacraments, Leurenius, *Formularium beneficorum*, section 3, chapter 2, question 453, no. 3 – there, «But if a deceased person in the hospital chooses burial in «another church, and therefore the funeral must be «taken out, the religious officials of that hospital cannot «interfere in this matter outside the boundaries of their own house, but in such a case the parish priest «enters, namely, the proper parish priest under whose p a <rochia here lives, and not that one, within whose parish the <hospital is located, unless perhaps by privilege and custom, etc.» To this, De Luca, *De Parochis*, disputation 23, no. 7; Nicol, *Lucubrationes civiles*, book 4, title 5, under no. 26, verse 8, agree; Zarat, decisions, 45, no. 12. With these points established, all that could be brought forward to the contrary is easily refuted, because since the parish priest of Saint Mary of Charity has never been, nor is, the proper parish priest of the deceased in the hospital, and can only claim a right because the hospital is located in his parish, he is repelled from acting unjustly: De Luca, *De Parochis*, disputation 23, no. 11; Zarat, decisions, 45, no. 8. Furthermore, it must be added that the

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territory of any parish priest is improper, and his jurisdiction, or rather, his pastoral office, is not attached to a place, as is the jurisdiction of Ordinaries, but consists and is founded on the person of the parishioners: Pianateli, *Consultationes*, 48, no. 22, vol. 3. Hence it follows that in his own...

[*Latin ed. p. 350*]

3S0 REGARDING THE INTERPRETATION OF THE WRITTEN TEXT: The parish has no right over a parishioner belonging to another parish: chapter 2, concerning Parishes; Fagnanus, in chapter "Lest it be prolonged," number 29, concerning penance and remission. Conversely, it has every right over its own parishioner – everywhere in the entire world: Hostien, in his work on penance and remission, section "To whom it must be confessed." And does this apply outside the territory? Navarrus, in canon "It pleased," number 84, concerning penance, distinct 6; Fagnanus, book 3, chapter "What is given to us," number 35, concerning clandestine marriages. It makes no difference that the proper pastor does not administer the sacraments to them. Since the right to perform funerals belongs to the proper pastor, namely, he who is obligated by office to administer the sacraments, even if he does not administer them accidentally. Therefore, if the parishioners, as is very common today, attend other churches and receive the sacraments out of devotion, they are not thereby removed from the jurisdiction of their pastor: Prosper, on territories, question 9, number 12, because those who offer the sacraments do not administer them by office and by their own right, nor can they be compelled to do so, nor are the people compelled to receive them from them, nor is there any bond between them, as there is between the pastor and his parishioners. It is entirely different when the precept of receiving the sacraments is urgent, as during Easter and in the danger of death; for he who cannot be compelled to administer at that time is not a pastor; and he who is not compelled to receive is not a parishioner, since the sacraments are to be given and received only from the proper pastor, as the text states, chapter "Everyone of both sexes." And there, Doctors on penance and remission, Clementine, "Religious in principle," on privileges; Glossary, in Clementine, "Recently." We have decreed concerning burials. Barbosa, in his dictionary, Clementine, "Religious," numbers 2, 3, and 4. Fagnanus, in chapter "With a chaplain," 26, concerning privileges, Cardinal; De Luca, on parishes, discussion 31, number 8, and on regulations, discussion 1, number 60; Pignat, in his consultations, 3, number 5 and following, volume 4. It seems, indeed, that further appeals are made to a matter already judged, arising from a sentence of the Sacred Congregation issued on January 21, 1857; for no one knows that a matter carried out between others does not harm a third party: "Leg. Cum res," 1 and following, concerning exceptions, concerning the subject of judgment, and that in that place, in general, it refers to the pastor,

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just as the same is designated.

[*Latin ed. p. 351*]

INTERPRETATIONIS RESCRIPTI 35: If it were to be understood otherwise, the judgment, since it contains an error of law, would not be to be considered; Scarfant., add. 35, no. 35. Pal. de Castro in I., with the cited documents on the matter, Rota decided, 263, no. 9, before Alexander VIII, and in Melevitana Jurispatria, March 31, 1702, §. As also before Scotto, and in Cremonese Beneficii, May 11, 1705, §. Likewise, unfortunately, on May 14, 1706, §. And so, having stated this, then because... Furthermore, the res judicata of the year 1857 can be opposed by the res judicata in this very cause of the year 1694. For, since at that time a controversy had arisen between the aforementioned Chaplains and Parish Priests, within the limits of whose parishes the Hospitallia Mariae de Vita, and S. Mariae de Morte existed, on February 43, the following questions were proposed: "I. Is it permissible for the Chaplains of the Hospitals of S. Mariae de Vita and S. Mariae de Morte to transfer the bodies of the faithful who have died in said Hospitals to other Churches, in which the aforementioned faithful have chosen to be buried, or have a private burial place? II. Does this right pertain privately to the Parish Priest of the domicile of the aforementioned deceased?" The response was: "To I, Negative; to II, Affirmative." Therefore, it seems that all legal recourse must be permanently denied to the Parish Priests of Mariae de Charitate. THE RIGHTS OF THE PARISH PRIEST OF S. MARIAE. On the other hand, it must be considered, in favor of the Parish Priests of Mariae de Charitate, the judgment of the S. C. C., issued on January 24, 1857, which has obtained the force and validity of a res judicata, and which establishes a precedent and is considered true: Leg. Res judicata, documents on the matter; Rota in Romana praelationis, May 5, 1777, §. 6, before Soderino, and decided, 304, §. 2, cor. Malvasia. Therefore, it is very consonant with justice to confirm the res judicata, which is not vitiated by any defect of nullity or injustice; since, from a valid and just res judicata, no extraordinary remedy of restitution in integrum is granted: Textus iii, cap. 1, De restii, in integr., leg. But if the documents on the matter...

[*Latin ed. p. 352*]

382 REGARDING THE INTERPRETATION OF DECREES, Minor., and the Rota's decisions, number 36, section 1, before Olivario. It is clear that the sentence of the Sacred Congregation [O.C.] is not infected with nullity or injustice, because, after hearing legitimate objections, and after carefully considering the arguments of the parties, it was delayed on several occasions before being issued; therefore, it eliminates all discussion of the matter in dispute and is binding on all. See Rota decisions 594, number 6 and 7, before Bichio; decision 471, number 11, before Emerio; and in the recent decision 235, number 6. See Leges Ingenui, 75 ff., concerning the

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status of persons; Leges, 1 and 2 ff., concerning free recognition; Leges, Res Iudicata, 207 ff., concerning the law. The Rota, in the Archpresbyterate of Cingulana, on February 22, 1771, before Origo; decision 21, section 4, before Malvasia. Furthermore, the reasons on which the Sacred Congregation [S.C.C.] based its recognition of the good right of the parish of Saint Mary of Charity against the chaplains of the Major Hospital appear to remain largely valid, even in the present case, against other parishes of Bologna. Indeed, the Apostolic Congregation for Visitation, under the date of December 16, 1695, at the request of the parish priest of Saint Nicholas in the prison of this esteemed city, against the Archhospital of Saint Mary of Consolation, inquired about the following doubt: "Is it permissible for the Ministers of Consolation of the city to associate the bodies of those to be buried elsewhere with a cross, and to transport them from the Hospital to the place of the Chain, and to prevent the parish priest from approaching the doors of the Hospital for them?" The response was: "No." From this, it must be concluded that the Sacred Congregation recognized the good right of the parish priest, within whose parish boundaries the Hospital is located, to mention the parish priest of the domicile and other parish priests of the city. Having considered both of these matters, the Most Reverend and Most Reverend Fathers were asked how the following DOUBT should be resolved: Concerning to whom the right of burial belongs in this case. RESOLUTION. The Sacred Congregation, on May 14, 1881, decided to respond: "Affirmatively, to the parish priests of the domicile of the deceased."

[*Latin ed. p. 353*]

353 REGARDING THE INTERPRETATION OF THE DECREE: From which, the following may be gathered:

I. The right of assistance in funerals pertains solely to the proper Pastor of the deceased person, due to the reciprocal necessity by which the pastor and the parishioners are bound to one another, concerning the administration of sacraments and their reception. For, while the pastor is burdened with providing the sacraments to his parishioners, these, in turn, are bound to receive the same sacraments from the pastor; from this reciprocal necessity arises parochialism.

II. Therefore, the pastor is assisted by law not because of the material location, or residence, or accidental death, but because of the spiritual office: namely, because the pastor has provided spiritual things to the parishioner while he lived.

III. Consequently, since the pastor, out of necessity, administers the sacraments only to his own parishioners, he can only intervene in the funerals of those parishioners, and not in the funerals of other deceased individuals within the limits of his parish; because, by their death in that place, they do not become his subjects.

IV. The office and jurisdiction of a pastor are not tied to territory, but are

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attached to the persons of the parishioners; from which it follows that the pastor, while having every right over his own parishioners, wherever they may be, has no right over his own parish concerning other individuals who are not parishioners.

V. Therefore, it properly pertains to the pastor to solemnly conduct funerals to the public cemetery, whenever his own parishioners, dying in the hospital, have chosen a burial place outside of it; for they have not changed their parish, from which they were brought to the hospital.

VI. Therefore, it has been resolved that the right of conducting funerals pertains to the pastors of the domicile of the deceased; that is, to each pastor with respect to his own parishioners, dying in the hospital; so that the pastor, within whose parish boundaries the hospital is located, can only intervene in the funerals of his own parishioners.

*Lettera, Tom. XIV, cap. CLXIV. 2»

[*Latin ed. p. 354*]

3S4 OF THE DISPENSATION FOR MARRIAGE (1) On April 9th and August 6th, 1881. SUMMARY OF THE CASE. In the year 1869, a marriage was arranged between Charles and Elizabeth, with the urging of the latter's mother. Subsequently, after nine months of continuous cohabitation, marked by discord, the woman separated from her husband. Following a report from the parish priest to the Curia, and after summoning the parties to provide an account of this voluntary divorce, it became evident from the report that the woman suffered from an impediment to the fulfillment of her marital duties. Regarding this matter, a process concerning the nullity of the marriage was initiated in the Curia; after hearing the spouses, who reported either the lack of consummation, or, as the husband claimed, the woman's reluctance, or, as the woman stated, the aversion of the husband, due to a defect in her leg, and after receiving sworn testimony from experts, namely a physician, surgeon, and obstetrician, to whom a physical examination of the woman had been requested, and who reported on her chronic and incurable impotence, and after finally hearing the official defender of the bond, a judgment was issued on September 18, 1871, declaring the marriage between Charles and Elizabeth to be null and void, granting the husband the power to contract another marriage, but prohibiting the woman from ever marrying. This judgment was ratified by the Archdiocesan Curia on December 30, 1871, to which the official defender of the bond had appealed.

(1) We warn the readers that this type of marital question is one of those from which one can learn how prudently and wisely the Sacred Congregation of the Council acts when it does not pronounce a judgment on the validity or nullity of a marriage. Rather, it orders investigations to be carried out to determine whether the marriage has been consummated or not. And if the fact of the lack of consummation is sufficiently proven, ac-

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cording to the prescriptions of the sacred canons, then it decides in favor of the validity of the marriage, leaving aside the specious question of nullity; especially when it concerns the physical impotence of one or the other of the contracting parties. For sometimes what appears to all to be impossible is, in fact, verified and occurs, due to an explanation of natural forces that was not foreseen, which, in the marvelous organism of the human body, are hidden under a mysterious veil, inaccessible to human science. Hence, even in the present case, the judgment concerning the lack of consummation was made, although it was not difficult to prove at least a relative impotence in the woman, due to a difference in the parts with the husband.

[*Latin ed. p. 355*]

DISPENSATIONIS MATRIMONII 335. Carolus, itaque, libertatem primam habens, novum matrimonium contraxit cum alia mulieris eiusdem pagi anno 1872, ex qua duos liberos suscepit. Elisabeth, contra, nefariam societatem cum viro instituens, praegnans effecta, die 14 Decembris 1876 enixa est. Rebus sic stantibus, causa in episcopali Curia maturae discussioni denuo subiecta fuit, atque in hanc eventum fuit sententia, preces nempe offerendi SSmo pro dispensatione super matrimonium ratum et non consummatum, idque attentamorali impossibilitate coniuges cogendi ad priora vota redire, ob odium et aversionem praecipue inter partes perdurantem. Sanctissimus benigne indulsit, ut acta processualia, iam expleta pro iudicio nullitatis matrimonii, adhiberi possent pro petita dispensatione, dummodo tamen Carolus ratam haberet propriamque faceret dispensationis petitionem, formiter Elisabethae notificandam atque intimandam; insuper ut rite processualia acta suppleantur quoad legitimas dispensationis causas, ac etiam quoad matrimonii inconsummationem, qua tenus haec ex praecedenti processu luculenter non constaret. In exsequutionem memorati decreti, sollicita fuit Curia prius audire coniuges, qui nedum declararunt optare, et petere dispensationem a matrimonio vinculo, sed etiam paratos se esse exhibuerunt ad confirmandam, etiam cum iuramento, matrimonii inconsummationem, reconciliationemque inter partes impossibilem esse dixerunt. Post haec, propinqui vel vicini quatuordecim auditi sunt testes, et si unum vel alterum excipias, ceteri de inconsummatione fidem perhibuerunt, vel quia id ex coniugum ore acceperunt, vel alicuius propinqui, vel de publica fama; insuper de coniugum honestate testati sunt.

Disceptatio Synoptica.

VOTUM THEOLOGI. Post delictuosum mulieris factum, ait Theologus, ad acquirendam moralem certitudinem de inconsummatione matrimonii, nihil aliud remanet quam iurata coniugum et septimae manus depositio. Nullum enim indicium sumi potest ex physica mulieris inspectione, quum

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[*Latin ed. p. 356*]

356. The dispensation for marriage has been broken by another man. With these premises, the Theologian added: from the procedural acts and the documents attached, it appears that sufficient proof remains that the marriage in question was not consummated. The spouses have always and constantly asserted that they never consummated the marriage, and they confirmed their assertion with an oath, according to the prescriptions of the sacred canons; moreover, their oath is supported by the testimony of seven witnesses, as Sánchez de Matrim., lib. 7, Disput. 108, n. 11 states. Indeed, the oath of the spouses is to be given the greatest consideration, especially when it is corroborated by seven witnesses, as Sánchez de Matrim., lib. 2, disp. 23, n. 1 states: "If the bride was not a virgin, and the dowry was not given in the bridegroom's *traducta* [Tarifa], then the faith of their oath is to be held, since no proof can be obtained from appearances." Similarly, according to Sánchez de Matrim., lib. 7, disp. 108, n. 6, since faith must also be given to widows, we can also give credence to the spouses in question. This is confirmed by Coscio de separatione coniugalis, lib. 3, cap. 2, n. 134. The same author, in the aforementioned passage, n. 13, shows how much weight should be given to the oath of seven witnesses. To these depositions is added the opinion, given under oath, by the Surgeon and Obstetrician, approximately one year after the marriage was celebrated. From this opinion, it is clearly evident that the woman was afflicted with a highly scrofulous constitution and a habitual illness due to a neglected dislocation of the hip, which she had suffered at approximately the age of eight. Therefore, we can argue that the Surgeon, the Surgeon, and the Obstetrician could not have been deceived in recognizing the actual, existing, impotence of the woman at that time, although they were truly deceived in asserting, due to that morbid condition, the perpetuity of the impotence. To this proof, another must be added, which is derived from the woman's aversion to her husband; for the woman was, as it were, forced to marry that man by threats and beatings from her mother and brothers. And it seems entirely credible that a woman would abhor the act of copulation with a man, because, besides aversion and fear of pain, there was a great repugnance to reveal her infirmity to anyone, which she did not even reveal to her own mother.

[*Latin ed. p. 357*]

DISPENSATION OF MARRIAGE 357. If just causes are present, a dispensation regarding a valid marriage is granted. In this case, anyone can see that the unfortunate state of the spouses provides a legitimate reason for a dispensation, given the evident danger of eternal damnation for both. There is alienation of affections, because the woman declares that she can-

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not and does not wish to return to her husband, whom she says has a fierce character. The husband, for his part, has said that he would rather remain a widower than receive his former wife. Furthermore, no children have been born from the second marriage, which constitutes a very serious loss, unless a dispensation is granted. OPINION OF A CANONIST. The canonist judged that the marriage in question is: 1° null, due to a lack of consent; 2° null, due to a lack of relative power; 3° valid, but not consummated; 4° that just causes are present for which a dispensation could be requested from the Apostolic See. Regarding the first point, he noted that a greater and more perfect consent is required in marriage than in other civil contracts; because these are of lesser importance and are dissoluble by human authority, or by the consent of the contracting parties. Therefore, in marriage, it must be said that the will is in no way coerced. He observed, first, that the woman had previously been ignorant of the man, with whom she was to enter into marriage; indeed, the girl's opposition to the man was so great that she was forced to do so through threats and vexations. Therefore, we have here, in the woman, signs of opposition that indicate absolute repugnance. The girl was afraid of the man, whom she knew to be irascible and addicted to military pursuits. She herself was a virgin and uneducated, having been raised in the fields, and in that rural dwelling, she recognized no authority other than that of her mother. In her, the greatest authority was that of her mother, whom she also experienced the fury of, as well as that of her brothers. Therefore, if the girl was forced, there was no marriage in her mind, according to Alexander III, cap. 14, *de Spons. et matrim.* And Schmalzgrueber, vol. 4, p. 1, tit. 1, § 393, says: "It follows that a marriage contracted by a virgin with a young man, whom she rejected, is invalid, due to reverence for her parents, with an indication..."

[*Latin ed. p. 358*]

358 DISPENSATIONIS MATRIMONII > concerning procreation, reproaches, harsh treatment, and similar > inconveniences, joined with a likely estimation. "Hence, if a girl has been forced to consent, it must be said that her consent was feigned; for perhaps she thought that the man, seeing the wounds with which she was afflicted, would be disgusted. Regarding the second point, or concerning the relative defect of potency, the parish priest reported what the spouses said: "Whenever the husband > attempts to have intercourse, the woman suffers intensely in her body, and > as often as she cries out in pain, she flees from the bed and runs away." The reasons for this pain were given by the Physicians: "About eight MSS. eight years ago, the girl suffered a dislocation of her left hip, and > from then on, she has limped with her foot; the entire region around and above the head > of the left femur is painfully inflamed, and a swollen area oozes pus; the region below the joint of the head of the left femur, as well as the inner surface of the left femur, > exhibits deep scars; the muscles of

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the left buttock, and those > of the inner left thigh, as well as the genital > organs, are afflicted with sensitivity..." However, the consultant wrongly believed that the physicians had judged the woman to have absolute impotence, when in fact it was only relative. The consultant considered that there was only a difference between the man and the woman, so that with another man, who had the necessary conformation, she could have intercourse. And therefore, if she suffered pain whenever intercourse was attempted, she was not struck by pain because of her dedication, but because of the difference: which constituted in this woman a permanent, but relative, impotence. From this, the Consultant also deduced, that the spouses are not obliged to return to the marriage because of a subsequent lack of potency; for if the woman is found to be potent with another man, this does not mean that she has potency with the first. For with him, every attempt proves futile. Regarding the third point, namely that the marriage was only ratified, the Consultant said that this can be deduced from what was said in the preceding section. And furthermore, there was in the marriage, about which we are speaking, a difficulty of intercourse due to the difference related to the man, due to the morbid sensitivity, due to...

[*Latin ed. p. 359*]

DISPENSATIONIS MATRIMONII 359: Ulcers with which the female genital organs were surrounded. The nature of the woman was so delicate that she was called a child, and therefore her membranes were very thin. However, these were found to be intact by the doctors, a clear sign, relating to the purity of the woman, of perfect virginity. As for the fourth point, namely, that there are legitimate reasons for obtaining the dispensation, there is no doubt. There is indeed hatred between the spouses; there is the advantage and legitimacy for the children; for the man had two sons in his second marriage; and the woman had two sons in concubinage; there is also public scandal, because the marriage was solemnly declared null by both tribunals. These reasons are sufficient for obtaining the dispensation, according to many theologians.

OBSERVATIONS OF THE DEFENDER OF THE SACRED BOND. The defender said to himself, what kind of proof should be used when dealing with spouses who have lived together for nine months, and have slept together? It is most important to consider the oath of the spouses, as it must be carefully corroborated. But this type of proof has the character of a presumption, and by exception, it takes on the true nature of proof. Coscius, n. 147, says: "Besides the confession of the spouses and the oath of seven witnesses, other proofs are required, if not only is there certain cohabitation between them, but certain cohabitation in the same bed." All canonists accept this doctrine, and indeed extend it to the case in which the betrothed have remained alone together even for an hour; because a presumption arises that the spouses have engaged in marital acts. Therefore, if contrary

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proofs can be given against this presumption, these proofs, according to some doctors, must be very strong and forceful. But it is objected: this presumption is destroyed by the fact of impotence, to which the consultants resort. But they are making a futile effort; for, considering the nature of the impotence that the woman is said to suffer from, the presumption of consummation of the marriage and its possibility are not excluded. For, omitting that...

[*Latin ed. p. 360*]

360. A report concerning the dispensation of marriage made by experts is unlawful, and furthermore, if the experts have spoken of a woman's impotence, as if it were a matter of opinion, the only thing that must be investigated is the nature and extent of the impediment, based on what the experts describe, in order to determine whether the possibility of marital union should be excluded. And indeed, the matter is not about atresia, or the closure of the vulva, nor about the absence of the uterus, nor about any defect of a genital organ that prevents the husband from having intercourse with his wife; but it is only about a morbid sensitivity in the woman's genitals, due to bad humors that flow from a wound in the thigh, so that they cannot bear any mechanical force. For, when the experts describe "bad consequences of a thigh wound," they add: "and also the lips of the mount of Venus, and the genital organs, with such morbid sensitivity, so increased that these parts cannot bear any mechanical force, it is easy to understand the impotence." But from these words, it is more easily inferred a simple difficulty in intercourse, due to the pains and torments that the woman would suffer, even from slight movements, than impotence itself. Moreover, it is to be noted that the experts have been silent about the woman's virginity, while writing about other parts of her body. For if they could have declared the signs of virginity, the judgment rendered would have a valid foundation. Therefore, if only a very severe pain, on the woman's part, prevented the carnal union, what is so surprising and impossible, if, even disregarding the pain, the wife were to receive the husband at times? But this possibility, considering the fact of the cohabitation and the sleeping together of the spouses, implies a presumption of the law and, by right, of consummation. Therefore, the consultants resort to the argument of antipathy, in order to prove the lack of consummation; but this antipathy is not proven in the records. And if it actually existed, it could prevent habitual intercourse, but it would not necessarily mean that, at least within the week in which the husband declares that he has been with his wife, the union was impossible. Therefore, when there is nothing to corroborate the spouses' confession, the presumption of the law regarding the consummation of the marriage remains intact, and with that presumption in place, the dispensation seems

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to be denied.

[*Latin ed. p. 361*]

DISPENSATIONIS MATRIMONII 361. Although data and new evidence have been presented concerning the hypothesis of *inconsummation*, legitimate causes for granting a dispensation are lacking. The Consultor Theologus, in order to avoid scandal, calls for the granting of a dispensation. However, scandal, whenever it may arise, must be avoided, even if it means concealing an error, in order to preserve the reverence due to the ecclesiastical tribunals, and to prevent the supreme authority and doctrine of the Church concerning the sacraments from being undermined. With the foregoing stated, the following question was put forward. Should one consult with the Most Holy Fathers for a dispensation concerning a marriage that is valid but not consummated, in this case?

RESOLUTION. The Sacred Congregation, having knowledge of the matter, on April 9, 1881, judged it fitting to respond: "With prior examination of the facts, affirmative." On August 6, 1881, the same question was raised again, and the response was "In the decisions."

FROM WHICH THE FOLLOWING MAY BE GATHERED:

I. *Inconsummation* of marriage can also be demonstrated by the oath of the spouses, especially if it is corroborated by seven witnesses (1).

II. Besides the oath of the spouses, there is no other intrinsic argument to demonstrate the lack of consummation after the woman has committed a fault.

III. The oath of the spouses should be given the greatest weight, also because faith must be given to widows, even if they have lived with a man, so that the remedy of a dispensation is not denied to them.

(1) *Conscientia de separatori*, lib. 3, cap. 2, n. 136, indicates how much weight should be given to the oath of seven witnesses: "Moreover, in this matter, the oath of seven witnesses, whether from relatives or neighbors of either spouse, is to be considered; if they affirm that they firmly believe the confession of the spouses to be true, and that they are so aware of the matter that they are incapable of uttering a lie or perjury, they, as if purifying the testimony, remove suspicion of collusion and falsehood. Although they may be able to conceal a hidden fact, their testimony is nonetheless sufficient for trusting the spouses."

[*Latin ed. p. 362*]

362. Regarding the dispensation of marriage: namely, those cases in which it cannot be proven by outward appearances that the marriage has been consummated. I. Conjectures, indications, presumptions, and other arguments, when considered together, can constitute certain proofs, with

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moral certainty, to which the mind of the judge adheres, whenever certain proofs, and physical certainty (1), are lacking. APPELLATIONS: March 12th and September 10th, 1881. SUMMARY OF THE CASE. Before the civil government, through a law of suppression, added the property of the Churches to the public treasury, the Metropolitan Chapter consisted of a double mass of assets, one common and the other fraternal. The Canons participated only in the common mass, while both Canons and Mansionaries participated in the fraternal mass; however, each Canon received a sixth, while each Mansionary or participant received only one ounce. When it became necessary to implement the aforementioned law and establish a suitable parish fund, with the favor of the Archpriest, who is responsible for the care of souls, the Chapter completely reorganized the funds, taking them from the fraternal mass, and the Archpriest and Parochian, who were supported from the double mass, promised to establish a suitable fund in the common mass, so that two-thirds of it would be provided by the common mass, and one-third by the fraternal mass. However, when the funds were not provided as promised, the participants, feeling that they were harmed by this method of operation, appealed to the Sacred Congregation and requested that (1) Turrecremata, in can. Requisisiti 2 cans. 33, quaest. 1, n. 4, states: "Although, with regard to that act, namely, the consummation of marriage, one never has certainty through evidential proof of the fact, nevertheless, a man, for the most part, relies on probable signs and conjectures, which, although they do not suffice to generate knowledge, are sufficient to generate faith or belief."

[*Latin ed. p. 363*]

363. The canons are to be brought before the participants to render justice concerning the matter suffered, as a result of the condemnation. The Sacred Congregation of Councils, on the 7th of December, 1878, issued a decree stating: "If there is a desire for concord, and if the controversy cannot be amicably resolved, the parties shall have recourse to their right before the Archdiocesan Tribunal, observing the order of law." What was to be feared, indeed happened: "Although all efforts were made by the Most Reverend Archbishop to bring the dissenting canons to agreement, these efforts proved fruitless, and therefore the participants brought the canons before the Archdiocesan Tribunal." The Most Reverend Archbishop, also remembering that he held a canonry, abstained from establishing the judgment, and, in his place and by his authority, he delegated the Primicerius of the Cathedral Church as his General Vicar and Ordinary Judge, to resolve this matter; who, after conducting the judicial proceedings to their conclusion, having heard and weighed the reasons presented on both sides, on the 17th of February of the year 1880, rendered a judgment unfavorable to the canons, that is, a judgment against them. Subsequently, a chapter was convened (consisting of fifteen canons) for the purpose of deciding

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whether the aforementioned judgment should be considered valid and approved, or whether, rather, an appeal should be made from it to the Sacred Congregation. Seven of the fourteen canons voted in favor of the appeal, while eight, including the Archbishop and another canon who, due to infirmity, was detained at home and expressed his vote through a procurator, voted in favor of accepting the judgment. Then, the seven canons filed an appeal with the Holy See. "Disputatio Optica." DEFENSE OF THE PLAINTIFF'S PARTY. The patron of this party denies all value to the vote of the Archbishop, which was given at the chapter meeting concerning whether the judgment should be accepted or rejected. For he who was the judge in the case cannot, afterwards, give his vote on his own judgment. But the Archbishop was...

[*Latin ed. p. 364*]

364. The judge of the appeal, in the controversy between the Chapter and the Participants, proves, through the orator, with the most well-known principles of law, that, according to the law, the delegating and the delegated are to be considered as one and the same person, insofar as legal effects are concerned, § i. He cites the mandate ff. concerning the office of him to whom jurisdiction is delegated, and Reiffenstuel, *Decretorum* book 1, title 29, numbers 32 and 39; Ferraris, *Bibliotheca Iuris*, at the words "Delegans et Delegatus," numbers 2, 5, and 6; the Rota in the *Anconitana Restitutionis in integrum* of June 7, 1841, § 5, before De Silvestris. Furthermore, having considered the vote of the Archbishop, it is already clear that the appeal was interposed by the majority of the Chapter. Even if the votes for and against the appeal had been equal, this should not be undermined, because, as the Sacred Rota decided in the *Sutrina Nullitatis* of May 10, 1847, § 3, before De Silvestris, and in the *Tyburtina Pecuniaria* of the same day and year, § 5, before the same, no single Canon can be denied the right to appeal. For in matters that concern all and in which the interest of everyone is involved, the majority cannot prejudice the minority, and it is sufficient that only one requests a revision of the judgment, according to the *Glossa in Cap. Cum omnes*, number 15, concerning the Constitution; the Rota in *Decis.* 81, number 19, and *Decis.* 82, number 31, in Tambur, *De Iure Mat.*, volume 3, at Pignatel, in Consultation 82, number 6, volume 10. With these premises, let us begin the calculation of the votes that were cast in that Chapter meeting. Seven votes were cast, and it is argued that these were equal, both for the acceptance and for the rejection of the sentence. But, after considering the vote of the Archbishop, six votes remained for denying the appeal, and seven for upholding it. This calculation, therefore, even in the case of equality, demonstrates the legitimacy of the action of the appeal. Furthermore, the defender argues that the Archbishop could not have cast a vote in the Chapter meeting, because the Bishop has dignity and authority over the Chapter, but from

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this preeminence and dignity, he does not have a voice or a vote in the Chapter, because the Canons are distinguished by reason of their dignity, and the Bishop is not counted among the members of the Chapter, just as the head of a family is not counted among the members of his household.

[*Latin ed. p. 365*]

365. The appellation is extinguished. Only the Canons possess all manner of administration of the Church, and only they form one body and only they represent the Church, as is taught by Pignatelli, *Consult.* 49, no. 2, vol. 6; *Consult.* 129, no. 30, vol. 9; and Schmalzgrueber, *in Tit. de iis quae fiunt a maiori parte Capituli*, nos. 5 and 20 and following. This doctrine, indeed, is held by the Canonists from the very Council of Trent, and its interpretation in Session 25, Chapter 5, *de Reformat*, where Bishops are ordered to convene the Chapter, to inquire into opinions, and to conclude according to those opinions. If, perhaps, an Archbishop claims to possess a right from which he enjoys a portion of the Chapter's revenues, which is called a *praebenda*, and to increase the amount of the *praebenda*, this claim is not of a better omen. For this perception represents nothing other than a pension imposed by the Chapter in favor of the treasury, for the increase of the revenues of the same treasury. For this kind of emolument, being established for the measure of the *praebenda*, has nothing in common with canonical quality. And this is deduced from the well-known distinction made by the Canonists between a *praebenda* and a canonry. Indeed, it is the right of the Canons to have a seat, commonly a stall, in the choir for the recitation of the Divine Office; to have a voice in the Chapter and to give their vote; and to exercise all other duties for the service of the choir, as opposed to the Chapter's offices, which pertain to the regular Canons. But a Canon attains this with his election or reception into the brotherhood, when the elected one acquires possession of the canonry, and is instituted into its prerogatives by means of canonical institution, which is true and effective possession. A *praebenda*, on the other hand, is an accessory or a pecuniary fund, or a right to receive a portion of the fruits by simple collation. This is from Cap. *Cum Mater*, §. Canon. de Constitut. Cap. *Relatum de Praebendis*, Ferraris, *ad verbum Canonicatus*, Art. 1, no. 1 and following, vol. 2. Therefore, if an Archbishop lacks the title of canon, he lacks the canonical quality, he lacks possession, he lacks reception into the brotherhood, and consequently he also lacks the right to give a vote and to have a voice in the Chapter.

[*Latin ed. p. 366*]

366. This assertion is supported by the fact that, as it can be ascertained from ancient records, no Bishop has ever been mentioned or recorded as being present in a chapter meeting, whether of the Canons or of the Clergy. Therefore, besides the canonical regulations, there also exists a custom, al-

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most beyond memory, by which the Archbishop is excluded from the chapter meetings and from casting a vote. This custom is upheld by the Chapter, even to the point of deducting a vote from those six who remained, in order to prevent the Archbishop's sentence from being confirmed, namely, the vote of Canon Joseph, who was infirm and absent, and who sent a written vote to the Archdeacon, to be added to the others in order to deny the appeal. But even this must be deducted from the calculation of votes by the Chapter's defender, because it is not permissible for the infirm or absent to publicly express their vote, or to submit a written statement. Except, that is, in the case of the election of a capitular vicar, in which the vote of the Canons, even those suffering from illness, must be ascertained; otherwise, no authority has ever been granted to the infirm to exercise the right to vote in the Chapter's proceedings, from which they are absent due to their infirmity. Furthermore, in order for the infirm to validly cast their own vote in the case of an election, it is permissible for them to appoint a proxy to cast the vote, or, if they prefer to cast it themselves, two scrutineers from the Chapter must approach them, and receive the ballot from the infirm person's hand. This is taught by Reiffenstuel, *lib. 1 decret*, title *de Electione*, n. 138 and following, and n. 9; Schmalzgrueber, *de Elect.*, n. 27; Piringh., *eod. tit.*, n. 146, and many others.

DEFENSE OF THE PARTICIPANTS. On the other hand, the patron who represents the interests of the Participants divides his argument into two paragraphs: in the first, he argues that the Canons who dissent cannot appeal as a moral body, namely, as part of the Chapter; in the second, he contends that they cannot appeal even as individuals. And with regard to the first, he asserts that it is certain and well-established in law that the authority of the Chapter rests with the majority and the healthier part of the Canons, so that what is done by the majority and...

[*Latin ed. p. 367*]

Section 367 concerns a healthier judgment, and it is understood that, having been completed by the entire Chapter, it does not admit of an appeal, and that the appeal, once removed, prevails: Barbosa de Canon and Dignities, chapter 38, paragraph 3. However, when in a matter, thirteen Canons have accepted a judgment, and only seven have considered it necessary to interpose an appeal, it is concluded that the majority of the Chapter has ratified and accepted the judgment, because the majority of the Chapter is considered to be that portion where there is a greater number of votes with respect to the entire Chapter present: Reiffenst., book 3, Decretals, title 11, concerning those things which are done, etc. Furthermore, he deduces that the healthier part of the Chapter, for the acceptance of a judgment, casts a vote only because among those who accept, the Archdeacon, who holds the highest dignity in the Chapter, and the Archbishop himself, who is also a Canon in virtue of the statutes of the Cathedral, are included. He

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states that it is not to be considered the healthier part of the Chapter that which consists of men more conspicuous in dignity, age, prudence, and piety: Reiffenst., loc. cit. Moreover, he continues, the opponents attempt to weaken the Chapter's resolution by excluding the Archbishop's vote, because he is the judge. For the Archbishop, although he has acted as judge, could certainly, as a Canon, give his vote; and there is such a difference in the mind of the sacred canons between the person delegating and the person delegated, that an appeal can even be made from the delegate to the delegator, as testified by Reiffenst., book 1, Decretals, title 28, number 93. And although, in general, an appeal is not given from the Vicar General to the Bishop, nevertheless, it is admitted in criminal and beneficial causes when the Vicar General has been specially delegated, as stated by Barbosa in the collection of Doctrines concerning the Council of Trent, Session 13, concerning reforms, chapter 2, paragraph 3. Furthermore, the advocate continues, the Archbishop and the other Canons who accepted the judgment of the judge gave their vote not out of their own favor, but against themselves and against their own interests. Therefore, the advocate concludes, if the Archbishop gave his vote against his own interest, it must be considered a movement of justice. To be presented to the participants.

[*Latin ed. p. 368*]

368. Regarding Appeals: But there is such a significant difference, it is urged, between the actions performed by an Archbishop in his capacity as Archbishop, and those performed by an Archbishop in his capacity as a Canon, that if an Archbishop, acting as a Canon, participates in a chapter meeting, and wishes to appeal from decisions made in that chapter, the appeal must be brought before the Archbishop himself, not as a Canon, but as an Archbishop; because in this case, he is not appealing from himself to himself, but from an inferior to a superior. Just as, if a Canon participates in a chapter meeting, and the chapter is negligent, the appeal is directed to him as an Archbishop, or as a superior. Barbosa, *De Canon. et Dignit.*, chapter 35, number 13. Therefore, it follows that an appeal can be made to the Archbishop from actions taken by the chapter, if the Archbishop participated in the chapter as a Canon; a fortiori, the Archbishop as a Canon must be distinguished from the Archbishop as a Prelate, when not he himself, but another person holding a different opinion for or against the chapter, has presented a judgment, even though he has received jurisdiction from him, because the actions of an Archbishop as a Canon are entirely different from the actions of an Archbishop as a Prelate; and consequently, it cannot be said that the Archbishop, acting as a Canon, could not have spoken out or given a vote, otherwise it would follow that the condition of an Archbishop as a Canon would be worse, simply because he is an Archbishop, contrary to the well-known principle of law that no one should be detrimental to his own office. From these points, the speaker concludes that the

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opposing party unjustly attacks the validity of the Archbishop's vote. He maintains that the vote of a Canon can be disregarded who, being detained at home by infirmity, appointed a procurator, namely the Archdeacon himself, who, in his own name, cast a vote in the chapter. Indeed, to appoint a procurator properly and lawfully, three things are required, as stated by Pirhing, *De elect.*, title 6, section 3, § 4, number 155, namely: 1. That the person appointing the procurator is absent from the place where the election must take place, and is present in a place from which he can and should be called to participate in the election; 2. That he is detained by a just impediment, which prevents him from attending the election; 3. That he entrusts his duties to one of the members of the electing body, and not to an outsider. Among the just impediments, infirmity is enumerated, by which someone is detained.

[*Latin ed. p. 369*]

APPELLATIONIS 1, v. 369, citing Pirhing, loc. cit., no. 146. However, the Canon, being absent from the chapter hall, remained at home in the same city; he was justly detained by a serious infirmity. He appointed a procurator, not an outsider, but the very Archdeacon of the Chapter. Therefore, since all three requirements are fully met in this case, no one could deny him the right to cast his vote through a procurator. Furthermore, it is argued in vain that a procurator can only be appointed when the matter concerns an election; on the contrary, Schmazlgr. de elect., no. 24, holds the opposite to be true. Pirhing, de elect., sect. 3, no. 140, and the most recent canonists, Iscard, in Praelect. iur. can., vol. 2, §. 423, no. 2, agree with this. Therefore, the speaker concludes, if any Canon is legitimately prevented from casting his vote in person in all important matters of the Chapter, it necessarily follows that a Canon gravely ill at home, having rightfully availed himself of his right to cast his vote through a procurator for the acceptance of a sentence, contrary to the Chapter, has done so lawfully. Therefore, the speaker argues, if eight Canons have voted in favor of the acceptance of the sentence, against seven who held a different opinion, it follows that the act of acceptance is valid and should be upheld, and no appeal should be interposed by the dissenting members, who are a part of the moral body, or the Chapter.

Turning to the second paragraph of his argument, the speaker vigorously defends the position that the dissenting members could not, in any way, have interposed an appeal. He maintains that the judgment was instituted not among individuals, but among the body of Participants, representing the common mass, and the body of Canons, representing the fraternal mass, as can be inferred from the introductory citation of the judgment of September 22, 1879, from the special delegation of the judge, from the notification of the contentious matter to the opposing party, from the contestation of the matter, and finally, from the judge's definitive sentence.

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Therefore, once a sentence has been pronounced and accepted by the body of Canons, a smaller part of that same body can no longer appeal from it.

Furthermore, as a stronger reason for the nullity of the appeal, Tom. XIV, fase. CLXIV, 24.

[*Latin ed. p. 370*]

370. The advocate maintains that the appellation must be granted, because the judgment does not directly and separately consider each individual Canon, but rather the entire common Mass, and the entire fraternal Mass, and only indirectly and secondarily considers the individual Canons who participate in them, as stated by Reiffenst. in reg. 29 iur. in 6, which says: "That which concerns all, must be approved by all" – and there, "<Plures vel omnes, ut universos, vel collective, collegialiter>" – and in matters taken in common, and as they constitute one body. It is said that something touches [them], when it does not pertain to a specific person or individual, but to the entire College... The chapter, etc., such as the *fundi* (Fondi), are properties in which, concerning their alienation or violation, it is not about a single, or any specific person or individual, but about the entire College—directly, primarily, and principally; although indirectly, secondarily, and less principally, it may also affect individuals in that sense... In this sense, the consensus and approval of the majority, and not all, are required.

Furthermore, it is established in law that in only one case is the consensus of all individuals required in the chapter, namely, when the matter is directly and separately concerned with individuals, or when the matter concerns individual Canons separately, and their prejudice is directly and primarily affected; otherwise, if it is secondary. (Barbosa de Canon. et Dignit. cap. 38 n. 13).

Moreover, it has been demonstrated that the Canons have not suffered, nor can they suffer, any detriment, because what has been taken from the common Mass has been added to the fraternal Mass, and what must be separated from the fraternal Mass will be added to the common Mass, in which the Canons themselves participate.

However, the advocate continues, even in the supposed hypothesis that the matter in question directly and primarily concerned all the Canons, the vote of all would not be required, but only that of the majority, because it is a matter of a debt to be paid by the participants; and it is no secret that the citation from reg. 29 iur. in 6 is misleading in many cases, and especially in favor of release from debts, in which case the Praetor is bound to follow the majority.

[*Latin ed. p. 371*]

371. Regarding the matter of appeals, the will favoring the liberation of Reiffenst. is found in the cited regulations, section 29 of the "Ius," para-

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graph 6, which states: "Whatever concerns all must be considered." The speaker argues that, in this case, the matter truly concerns a debt owed to the participants, citing the opinion of the delegated judge, as well as the law enacted in February 1876 by the Sacred Congregation of Councils, according to which parish priests must contribute to the common mass. Therefore, he concludes, the controversy should be resolved in such a way that only what the majority of the Chapter has decided should prevail, namely, abstaining from appeal and litigation, and fulfilling the debt owed to the participants, so that greater expenses may be avoided, and the capital of animosity that could easily arise may be restrained. Reiffenst., book 1, Decretals, title 34, number 2. Having considered both of these points, the matter was referred to the judgment of the Most Holy Fathers to decide how the dispute should be resolved, specifically whether a legitimate appeal exists in this case.

RESOLUTION. The Sacred Congregation of Councils, having considered the matter, on March 12, 1881, decided to respond: "No." On September 10, 1881, the question was raised again under the form of a doubt: "Should one adhere to or depart from the decisions made in this case?" and the response was: "Adhere to the decisions and maintain them."

FROM WHICH WE GATHER:

I. That when the majority and healthier part of the Chapter decides something, it should be understood that the entire Chapter has acted in accordance with that decision, and that the decision should prevail, the appeal being dismissed.

II. That there should be no doubt about the matter, that the majority and healthier part is that in which eight canons contend against seven, and in which, when votes are cast, the Ordinary and the Archdeacon, the highest offices of the Chapter, participate.

III. That a canon who is detained at home due to illness can, in all the most important matters of the Chapter, give his vote through a proxy.

[*Latin ed. p. 372*]

372. The administrator of an *appellatio* (appeal); indeed, according to some doctors, even one who is not impeded by a legitimate cause, can appoint a procurator in all matters, except for the matter of an election (1). REGARDING THE SUSPENSION, IRREGULARITY, AND DEPRIVATION OF A PARISH, FINES AND EXPENSES. March 20, 1880, and May 29, 1880. SUMMARY OF FACTS. Stephen, a priest of the diocese of G., having begun his priesthood, was sent to the town of Oppido O. to serve as a vice-parish priest. Due to the harshness of his character, he seems to have fostered discord, not only with the parishioners, but also with the parish

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priest himself, who therefore made recourse to ecclesiastical authority. Furthermore, since the episcopal see was vacant, the church of Oppido O. was also vacant; hence, the capitular vicar transferred him to this church, so that he might perform the office of curate. It appears from letters sent by the secretary of the royal office of State and Justice to the capitular vicar that, while residing in this place, he aroused aversion in those subject to him, the civil authorities not being excluded. However, despite this, he is appointed a permanent vicar, even though this church was united to the episcopal see. Nevertheless, it does not seem that the reason for his actions has been changed. Since, through recourse made against him, the royal general procurator informed the capitular vicar in writing that the parish vicar of G. had already incurred several penalties for (1) The Abbot in chapter *Quia propter de elect.*, related by Benedict XIV, question 122, states: "Retain in your mind" that in another matter, one can appoint a *procurator* so that he may act in his stead before the university, even if the one appointing him can be present in person. For a special provision is made here regarding the matter of an election." Therefore, in other matters, which are to be explained in this chapter, one can also appoint a *procurator*, even if one is not impeded, according to the very text.

[*Latin ed. p. 373*]

SUSPENSIONIS, IRREGULARITATIS, ETC. 373 The conduct and manner of acting of this priest were such that they could disturb the public peace. Matters had reached this point when a new Bishop was elected, who endeavored to restore harmony, showing clear signs of good will towards the priest, Stephano. However, over time, the civil authorities, weary of the complaints against the parish priest, turned to the Bishop, asking him to restrain him with appropriate remedies. The Bishop admonished him three times with paternal words, urging him to change his manner of acting and living, and to try to win back the love of his subordinates. However, this priest showed no hope of amendment, but rather, indignant, he insulted the Bishop with injuries, insults, and calumnies, and he decided to damage his name and reputation by publishing a written work and distributing it throughout the island of Sardinia. The Prelate was astonished by this, and, in order to defend the Episcopal dignity, he appealed to the Apostolic See, presenting the history of the facts, and asked what should be done in this case. And after receiving a response, in order that he might exercise his right, in accordance with the provisions of cap. 1, sess. 14 of the Council of Tridentini, he suspended him from the exercise of the sacred orders, until the Holy See otherwise decided; and he removed him from the parochial benefice until another provision was made by the Holy See. Meanwhile, since the priest refused to hand over the parish and its affairs, a legal action was instituted against him, at the urging of the public prosecutor. In this case, documents were presented, and witnesses were formally heard,

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who, under oath, testified not only about the priest's conduct in the civil sphere, but also about the hatred and animosity of the people towards him, although they also spoke of his zeal and diligence in the Church. After the legal proceedings were concluded, he was summoned to appear before the court and prepare his defense, but, persisting in his defiance, a judgment was issued on May 20, 1877, which completely deprived him of the parish. Upon notification of the judgment, Stephano appealed to the Holy See through the Secretariat of State. The Sacred Congregation, after examining the petition of the Secretariat of State, responded: "Let him exercise his right before the Archdiocesan Court." However, the priest, Stephano, continued to show himself obstinate.

[*Latin ed. p. 374*]

374. CONCERNING SUSPENSION, IRREGULARITY, ETC.: He wished to relinquish the parish and its affairs; and not only to perform divine services, but also to administer the sacraments. Therefore, the aforementioned [ecclesiastical court] publicly declared him irregular. *Disceptatio gynoptica*. *Defensio Episcopi*. He who presents the arguments for the Episcopal court states that this cause cannot be definitively resolved, because there is no recourse to the Holy See regarding the suspension, which was imposed based on informed conscience, and there is no appeal regarding the deprivation of the parish, a sentence pronounced by the court, as if it were derived from the exposition of facts. Despite these obstacles, he proceeds with his defense, and first argues that the decree of suspension cannot be overturned, because the suspension was imposed not for minor, but for very serious reasons, and because it is not perpetual, but temporary. He endeavors to prove that it was imposed for very serious reasons, first, from the fact that Stephen, through his uncivil and imprudent conduct, so inflamed and irritated the minds of the parishioners that he aroused their enmity, aversion, and hatred towards himself, provoking the censure of all civil authorities; second, because he lived shamefully and scandalously, as is evident from the testimonies of witnesses in the aforementioned proceedings; third, because he was calumniated by a notorious libel, printed and disseminated throughout the entire island of Sardinia; fourth, because he aroused many scandals due to numerous lawsuits and imprisonments in which he was involved; fifth, because he persistently demonstrated himself to be incorrigible, even though the Bishop had paternally admonished him three times. He then states that the suspension is temporary, and not perpetual, which, he says, is manifest from the very formula used by the Bishop. For the Bishop had said, "Until our good pleasure, and until otherwise arranged." The orator argues that the three admonitions were unnecessary, because the suspension was imposed based on informed conscience. He asserts that the validity of the suspension is already established, and therefore there can be no doubt about the justice of the decree of irreg-

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ularity. For, indeed,

[*Latin ed. p. 375*]

SUSPENSION, IRREGULARITY, ETC. 375. By law, if a cleric who is under suspension violates that suspension, he incurs irregularity. It has been ascertained that the priest Stephen was struck with suspension by the Bishop; and it has also been ascertained that he violated this suspension by celebrating Mass and administering the sacraments, as is manifest from the records. Therefore, it is beyond doubt that he contracted irregularity, and for this reason, the decree of the Bishop of Scopi, in which he declared the priest to be irregular, is justly made. The advocate for Grado, supporting the sentence of deprivation of the parish, maintains that it should be confirmed. Indeed, considering the facts, the justice of the sentence shines forth clearly. Moreover, the Supreme Pontiff Clement XIV, in the Constitution *Inter Multiplices*, decreed that vicars of parishes on the island of Sardinia could be deprived of the care of souls without any prior legal solemnity, but only through a summary process. However, if, through a formal process, his contumacy is declared, a sentence of deprivation of the parish may be issued. Furthermore, it is certain in law that a capitular vicar cannot confer benefits when the episcopal see is vacant, which pertain to the free collation of the Bishop alone; as Reiffenstuel states in book 3 of the Decrees, title 9, number 30: "Nothing should be innovated when the see is vacant." Neither a three-year nor a ten-year prescription is valid in such a case, as Rigantius indicates in his commentary on Rule 36 of the Chancery, numbers 122 and 140; the provisions made for benefits by a capitular vicar when the episcopal see is vacant "do not acquire the title of validity, since the collation of benefits does not pertain to him, either in fact or in appearance; and a three-year possession is not sufficient if it is immediately evident that the title is null or defective." It is well known in law that what is null cannot produce any legal effect. Furthermore, it is certain that Stephen, through his uncivil, imprudent, and improper conduct, so irritated and angered the parishioners of Asperen that he aroused their indignation, aversion, and hatred towards himself; to such an extent that all of them earnestly desire his removal and deprivation of the parish.

[*Latin ed. p. 376*]

376. SUSPENSIONS, IRREGULARITIES, ETC. Witnesses, having been examined in the process, and having sworn an oath, testified. Indeed, the animosity of the people had reached such a point that they no longer wished to receive the sacraments from him. Hence, it followed, both legally and justly, that the parish of Orbais was to be vacated. Thus. The Congregation, both generally and especially in Baren, regarding Resignations and Reintegrations on May 29, 1852, §. Justice - there - « R e > ceived from the Holy Congregation, that, because of the hatred

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and animosity of the parishioners, if these are just and reasonable, the parish priest should be deprived of his office (1). Indeed, it is well known in law that parish priests who live shamefully and scandalously should be deprived of their parish, without any formality, but by the proper course of action; Tridentinum, cap. 6, Session 21, concerning Reformation. Furthermore, it is the law that if a cleric is legitimately proven to have calumniated another cleric, he should be deprived of the benefits he enjoys. Thus, the Doctors and Canonists say, and especially Reiffenstuel, book 5, decretal, title 2, number 10, concerning the most serious matters; Schmalgrueber, canon law, page 1, title 2, number 25; Huth, canon law, book 5, number 2, of the same title. Indeed, Stephen, having calumniated not a cleric, but a bishop, in a famous book published and disseminated throughout the entire island of Sardinia, is to be deprived of the benefits he enjoys. Furthermore, it was observed that Stephen had stubbornly refused to heed warnings for ten and eight months, remaining in suspension and irregularity. Moreover, Menochius, in his work on arbitrations, 416, number 5, states that he who persists in disobedience for a year should be removed from the parish. Therefore, even for these reasons, the sentence of deprivation from the parish should be entirely confirmed. Having concluded this, he proceeds to the final point of his prayer, noting that, both according to civil law and canon law, those who caused the damage are to be held accountable; but, (1) Compare Derthonen, related in Volume XII, page 663; from which it is clear that even because of the hatred of the people, a parish priest can be removed from the parish.

[*Latin ed. p. 377*]

SUSPENSION, IRREGULARITY, ETC. 377. The fault lies with the episcopal curia, but any damages, if any, suffered by the priest Stephan are to be rejected by them. Furthermore, in this matter, it is considered that the Constitution of Benedict XIV, *Ad coercendas*, of October 1755, § 21, should be kept in mind, which states that it is not easily possible to compel ecclesiastical courts to compensate for damages and expenses, unless it is proven that there was deceit. Having briefly stated these things, the following points are to be clarified:

I. Do the decrees of the Bishop and the opinion of the episcopal curia hold in this case? And to what extent? Negatively.

II. Is there a basis for compensation for damages and expenses in this case?

RESOLUTION. The Sacred Congregation responded on March 20th, and after deliberation, on May 29th, 1880, it decided as follows:

Regarding I. With regard to the decree of May 20th, 1877, in the absence of an appeal, there is nothing to be said; but regarding the rest, it affirms and adds further.

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Regarding II. As provided in the first point.

FROM WHICH THE FOLLOWING ARE GATHERED:

I. A suspension, based on informed conscience, by which the Bishop prohibits advancement to the orders and the exercise of the reception, is maintained whenever it has been based, at least, on one hidden crime, which is sufficient to incur the suspension.

II. Against this extraordinary form of judgment, no appeal is granted, but only a recourse to the Holy See, to which the Ordinary is obliged to reveal the crimes that are hidden.

III. The sentence of suspension, once pronounced, is maintained in every way, when the Bishop has carried it out with the advice of the Apostolic See, to which he has already revealed the history of the crimes, explaining the situation.

[*Latin ed. p. 378*]

Z7S. OF SUSPENSION, IRREGULARITY, ETC. I. V. When, in a case of this kind, an extraordinary form of judgment is not provided, at least in the case of a suspension (1), it follows that the one who is subjected to this censure remains irregular, and may administer the sacraments. V. A priest, being in a state of irregularity, is not absolved from it by the very resolution in which it is stated, "that, concerning the remaining matters (namely, concerning the decrees of the Bishop, by which the priest is suspended from the exercise of his office, and is publicly declared irregular), it is affirmed." V I. Likewise, the judgment of the episcopal court, duly promulgated according to the order of law, regarding the deprivation of a parish, cannot be overturned, from which the Sacred Congregation responded: "in the absence of an appeal, nothing should be done" (2).

ON ABSOLUTION AND RESTORATION. Dated May 14, 1881.

SUMMARY OF THE FACTS. In the year 1839, a testator established a chaplaincy in the Cathedral Parish to provide for a poor cleric from his patrimony. However, he imposed upon this cleric the obligation of celebrating Masses for the soul of himself and his wife. In the year 1854, the Bishop

(1) An appeal has a suspensive effect when it prevents the sentence from being carried out; it has a devolutive effect when the appeal itself causes the sentence to remain valid, unless it is annulled by a higher authority, and it does not prevent the sentence from being carried out. Therefore, when, in a suspension based on informed conscience, an appeal is not granted in a suspensive manner, the suspension remains in effect until it is overturned by the Apostolic See. Sometimes, the one who, being thus ensnared, administers the sacraments, becomes truly irregular. The Sacred Congregation, in a meeting held on June 21, 1625, declared that a parish priest had contracted an irregularity, who, having been suspended by the Bishop, based on in-

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formed conscience, from all exercise of his pastoral duties, while having interposed an appeal, still remained in the exercise of his ministry. See also whatever is related in Appendix III, page 299, of this volume. (2) Since it is established that, after the ten days established by law for the appeal, the priest submitted a letter to the Secretariat of State, which does not take the place of a written appeal; therefore, a true and formal appeal was lacking. Therefore, the judgment of the episcopal court, by which the priest was deprived of the parish, rightly passed into a final judgment; therefore, the Sacred Congregation stated that nothing should be done. Consequently, the priest, deprived of the parish, is bound by the censure of suspension and irregularity.

[*Latin ed. p. 379*]

The decree ABSOLUTIONIS ET REDUCTIONIS 379 stipulated that as many Masses should be celebrated as the income would allow, after deducting expenses, with an alms of 1.25 livres for each Mass. In the year 1858, the cleric Alexander was appointed to this vacant chaplaincy; and the Cathedral Chapter, acting without proper authority, imposed upon him the obligation to celebrate only 12 Masses annually, while the annual income of this benefice amounted to 575 livres, after taxes. The cleric, after considering the Bishop's decree, celebrated 12 Masses; and now he requests a modification of the Bishop's decree, with a reduction, established and permanent, and absolution for the time past, with the Bishop's consent.

The matter is clear. First of all, it must be noted that the amount of the alms and its just assessment must be determined either by the common custom prevailing in the diocese, or by a synodal law, or by a decree of the Bishop, as Suarez teaches in *test. part. D. Thomae* volume 3, question 86, section 2, in the first and second conclusions, and as others cited by Benedict XIV in his discourse held in the case of the City on April 13, 1726, while serving as Secretary of the Sacred Congregation, and as the same Sacred Congregation held in the case of Aprutina on November 15, 1698, in volume 48, decree, page 548, in which, after posing the following questions: "Firstly, what should be the amount of the alms for manual Masses? Secondly, what should be the amount for perpetual Masses not taxed by the founders?" it responded: "Sacra, etc., for the first and second, it was judged that the custom of the place, or the synodal law, should be considered, as far as it exists; but if neither exists, the Bishop should establish the appropriate alms according to his judgment." From this, it must be concluded that the Bishop acted according to the law, having interpreted the words of the decree with the intention of imposing an obligation to celebrate Masses, and that on October 10, 1854, he decreed that as many Masses should be celebrated as the income would allow, at the rate of 1.25 livres for each

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Mass.

[*Latin ed. p. 380*]

380. ABSOLUTION AND REDUCTION. Given these premises, absolution from past omissions would seem to be denied, since in the case of Alexander, good faith is lacking, which is entirely required for the Supreme Pontiff to grant such absolution, as numerous Sacred Congregational Decrees testify, especially in Perugia on July 3, 1784, and in Bologna, concerning the service of the choir, on November 20, 1787, in response to question 2. However, Alexander's lack of good faith is deduced from the fact that, when he was appointed, he was made aware of the obligation of Masses, according to the Bishop's decree, which was made known to him. Furthermore, in order to demonstrate good faith, he appealed to a reduction granted by the Patrons; but it was stated that the pious foundress had reserved no right of patronage for herself or for others; it was also stated that the Bishop's *litterae* granted concessions regarding the decree of the year 1854, rendering any previous reduction from the Patrons of no consequence; and that only the Supreme Pontiff can grant a reduction of Masses, a fact that no one is ignorant of, since it is only the Supreme Pontiff who has the power to regulate the wills of the dying. A lesser reduction of Masses seems to be the appropriate course. Indeed, it is established in both laws that the last wills of the dying are to be held as if they were law, and are to be observed to the very last detail. L. 12 and 120 ff. de verb. signi f. Nov. 22 cap. 2 Can. ultima voluntas dist. 13 quaest. 2 Cap. Si haeredes et Tua nobis de Testam. Çlem. Quia contigit de Relig. dom. Trid. cap. 8 sess. 22 de ref. Adhering to these prescriptions, the Sacred Congregations have not infrequently denied a reduction of Masses, as can be seen in Rome, concerning the obligations of Masses, on December 15, 1714, in Albano, concerning the chaplaincy, on April 23, 1734, in Nicaea, concerning the obligations of Masses, in 1780, and in Rome, concerning the reduction of Masses, on May 29, 1824.

GRACE SEEMS TO BE TO BE GRANTED. On the contrary, it should be considered that the prayers offered seem to be worthy of a benevolent response, both with regard to absolution for past omissions, and with regard to a reduction in the future, because the Bishop's favorable opinion prevails, which in such matters is of the greatest importance.

GRACE SEEMS TO BE DENIED.

[*Latin ed. p. 381*]

ABSOLUTION AND REDUCTION 381: The Sacred Congregation of the Council has more authority in this matter. It cannot be permitted to argue, concerning the absolution, that the priest Alexander acted in bad faith; for it must be understood, first of all, that, in order to obtain such an absolution,

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good faith is not so necessary that, if it is lacking, the absolution must be entirely and permanently denied. Furthermore, it must be noted that good faith was not lacking in this case, since the priest did not celebrate all the Masses, although he had the ability to do so, given the obligation imposed upon him by his patrons, who had named him, to celebrate only twelve Masses; and this, indeed, seems to exclude bad faith. I believe that a reduction of the number of Masses, according to the Bishop's wish, should not be denied. Certainly, the general words of the testament: "with the obligation of celebrating Masses," do not determine the number of Masses to be celebrated, and therefore, a benevolent and equitable interpretation allows for this to be determined; considering the circumstances of the place and time. Moreover, no one can deny that these circumstances, and especially the greater needs for honest sustenance, favor such a reduction. Nor is this contrary to the practice of the Sacred Congregation of the Council: for, as the circumstances require, it often grants a change in the divine worship, respecting the will, as is evident from the decree of the Council of Trent, Session 22, chapter 6, concerning the reform, to which the resolution in Forlivio, July 12, 1799, refers; but it also suspends, reduces, and sometimes suppresses Masses, as is evident in Casale, Communications of March 30, 1822. Having considered these matters, the Most Reverend Fathers decided to determine the response to the petitioner's prayers. RESOLUTION. The Sacred Congregation, on May 14, 1881, having considered the matter, responded: "Ten Masses shall be celebrated for the granting of absolution concerning the past, with the promise made to the Reverend Father. As for the future, the Bishop shall determine the number of Masses to be celebrated each year, but not less than Cento."

[*Latin ed. p. 382*]

382 DISPENSATION. On May 14, 188, through a brief petition, a SUMMARY OF THE FACTS is presented. In the year 1767, a certain Society of Priests established a chaplaincy at the diocesan seminary, entitled "Donation of the Seminary," founded by the priest Tortolini, along with goods amounting to two thousand and two hundred. Due to this donation, there is an obligation within the seminary to satisfy the burdens inherent in the chaplaincy, and to designate a student from the Congregation of the Society, "to be maintained free of charge"; and no one is elected and designated, unless he obtains two out of three votes. When a new student was to be elected, five adolescents presented their names, among whom was Nazarenus, who was ten years and six months old. This young man, knowing that he could not be validly elected due to his age, before the Congregation was held, offered prayers to the Most Holy, requesting that he be granted a dispensation from this impediment of age. However, the Society of Priests proceeded to the act of nomination before the requested grace was granted to the petitioner, and, disregarding the others present, none of

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whom obtained two out of three votes, they nominated the aforementioned Nazarenus, conferring upon him fourteen votes out of eighteen. As a result, Blasius, the father of one of those who were passed over, deeply grieved, submitted a petition to the Congregation, requesting that the election of Nazarenus be declared null and void due to his lack of age, and that his son, Joseph, a cleric of twenty-one years of age, who was studying rhetoric, be admitted. A Synoptic Discussion: At first glance, the election appears to be valid. For, although the Council of Trent... [The text is incomplete, and the arguments for and against Nazarenus's election are missing.]

[*Latin ed. p. 383*]

DISPENSATION 383, session 23, chapter 18, concerning reforms, orders that those who have reached at least twelve years of age be admitted to the Seminary; however, the almost universal practice is to admit even those who have not yet reached that age. Nor does it seem to impede the recent decree of the Sacred Congregation of Seminaries in Trent, dated June 10, 1876 (1), provided that it is prescribed therein that "those who are supported at the expense of the Seminary can be admitted at the beginning of the twelfth year, although those who are not included in the Tridentine law"; and that the matter concerns the admission of a young man being supported by the fruits of goods which the Society of Priests donated to the Seminary for this purpose, which does not seem to be included in the Tridentine law. However, if it is considered that, due to the donation of goods made to the Seminary, the young man from Nazareth is incapable of obtaining the aforementioned position due to his age, there are reasons by which the Holy Father may grant him a dispensation. Indeed, there seems to be reason to consider the act of presentation by the Congregation, which, with almost unanimous favor, expressed its will regarding this young man; and it not only provided for the support of this student, but also enjoys the right of nomination.

WHAT SEEMS TO FAVOR THE YOUNG MAN FROM NAZARETH. On the other hand, it seems that the young man from Nazareth was not validly elected. The words of the Tridentine Council, session 23, chapter 18, concerning reforms, are clear, joined with the decree of the Sacred Congregation of Seminaries in Trent; by which it is declared that one is incapable of entering the Seminary to live at its expense if he is under the age of twelve. However, since the young man from Nazareth is over ten years of age, he does not yet seem capable; and the election of an incapable person, according to chapters 7 and 42 concerning elections, is considered invalid. Although these statutes concern benefices, they seem to be applicable to this case as well, due to the analogy of the act. Moreover, this seems even truer if the incapacity of the elected person was acknowledged by the electors, as it is stated to have happened in this case: because in the Congregation, convened for this purpose, there were some protests. From which protests

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it is noted that they were made known to all (1).

(1) You have such a decree in Volume IX, page 339.

[*Latin ed. p. 384*]

384. The incapacity of the Nazarene, and consequently, the nomination and presentation of the Nazarene, seem to be matters of no consequence. However, it might be objected that it is the duty of the Seminary to provide for the sustenance of a student, in consideration of the accepted donation, and therefore, the Nazarene should not be considered under the law of Trent. Indeed, once the Seminary has accepted the donation, the ownership of the donor's property is transferred to it, and it is always understood that the Nazarene is sustained at the expense of the Seminary. But it does not seem fitting to grant a dispensation regarding the impediment of age. For the Nazarene is a boy of ten years, who is not yet able to decisively "affirm" his vocation to the clerical state; while the other candidates are superior to him in both studies and age. Therefore, nothing seems to be required in order to grant a dispensation, and the act of presentation does not appear to be relevant. When the grace of the elect seems to be arbitrary, the wise order of the law does not seem to be overturned. With the foregoing considerations, the matter was referred to the judgment of the Most Eminent and Reverend Fathers to determine what response should be given to the petitioner's request.

RESOLUTION. The Sacred Congregation, having considered the matter, responded on May 14, 1881: Negatively, and a new election shall be held.

FROM WHICH YOU MAY GATHER:

I. From Session 23, chapter 18, concerning reforms, it is declared that one who has not reached the twelfth year of his age is incapable of entering the Seminary, unless he is to be sustained at the expense of the Seminary.

II. From a recent declaration of the Sacred Congregation, it has been established that it is sufficient that the twelfth year has begun, for those who are sustained gratuitously in the Seminary, but this does not apply to others under the law of Trent.

III. The election in the matter does not seem to have been legally valid, because the electors knowingly elected a young man who was incapable by age; for it is necessary that those sustained at the expense of Seminaries have at least begun their twelfth year, according to the decree of June 10, 1876, in Trent.

[*Latin ed. p. 385*]

385 FROM THE CONSISTORY ACTS CONCERNING THE CONSISTORY HELD ON MARCH 27, 1882. His Holiness, after delivering an address this morning, publicly announced, concerning three Cardinals of

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the Holy Roman Church created and reserved *in pectore* on December 13, 1880: Reverend Father Francis Ricci-Parracciani, Prefect of the House of His Holiness, born in Rome on June 8, 1830. Reverend Father Peter Lasagni, Secretary of the Sacred Consistorial Congregation and of the Sacred College of Cardinals, born in Rome on June 15, 1814. The same Holiness also created and publicly announced the following Cardinals of the Holy Roman Church: Reverend Father Dominic Agostini, Patriarch of Venice, born in Tarvisio on May 31, 1825. Reverend Father Charles Martial Allemand Lavigerie, Archbishop of Algiers, formerly of Caesarea of Julia, born in Esprit, Diocese of Ature, on October 1, 1825. Reverend Father Joachim Lluche y Garriga, a Carmelite, Archbishop of Hispalis, born in Marrese, Diocese of Vicen, on February 26, 1816. Reverend Father Eduard Mac-Cabe, Archbishop of Dublin, born in Dublin on February 14, 1816. From the Order of Deacons: Reverend Father Angel Jacobini, Assistant of the Holy Roman Inquisition, born in Cynthiani, Diocese of Albanen, on April 25, 1825. After these matters, His Holiness proposed the following: "MOST HOLY FATHER, having considered the matter, and with the advice of the Sacred Congregations, decreed on the seventh day before the Ides of March, in the year 1882, and recorded in the Acts, Volume XIV, page CLXV, 85."

[*Latin ed. p. 386*]

FROM THE ACTS OF THE CONSISTORY: The Apostolic Bull, to be promulgated by the Chancery, concerning the succession of the aforementioned Apostolic See, and having considered the ancient dignity of the Church of Perugia, its steadfastness in faith, piety, and the virtues instilled from the Apostolic age, and having considered the Primate, along with other men of merit, who, having assumed the title of Archbishop, have adorned the Church with their martyrdom, sanctity, doctrine, and works, and who have brought glory to that illustrious Church, and who have raised the See of Perugia to a higher degree in the ecclesiastical hierarchy, and having considered the dignity and honor conferred upon them with the title of Archbishop and name, and having considered that they have wisely governed, for thirty-two years, the aforementioned See, and that they have cultivated it with paternal care, and have increased its benefits, and have illuminated it, or that they have been Presidents of the Apostolic Province of Perugia, or that they have been the most learned from the Cathedra of that ancient See, His Holiness, in a perpetual Consistory, as is the custom of His Apostolic benevolence, seeking and requesting as a testimony of the merits of the illustrious Church of Perugia, in order to raise it to a higher and more sublime degree in the ecclesiastical hierarchy and to confer upon it the honor that it deserves, decreed and ordered that they should continue to govern and administer the aforementioned See, as they have done for so many years, without any other Apostolic Bulls,

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and that they should enjoy the seat and the sacred Archbishop's ring and pallium, taken from the Body of the Blessed Peter.

THE CATHEDRAL CHURCH OF ORILLEN. Favored by the Reverend Fathers Victor Guisasola and Rodríguez, hitherto Titular Bishops of Dora in Pal, and simultaneously Priors of the Military Order of Cluny, for presentation to the Most Serene King.

THE CATHEDRAL CHURCH OF OVTEN. Favored by the Reverend Fathers Sebastiani Herrero and Espinosa de los Monteros, for presentation to the Most Serene King.

THE CATHEDRAL CHURCH OF ABLEN. Favored by the Reverend Father Cyriacus Maria Sancha Hervás, hitherto Titular Bishop of scopi in Arabia, for presentation to the Most Serene King.

[*Latin ed. p. 387*]

BY ORDER of the Most Reverend Doctor John Mary Valero, until now Bishop of Tuy, for the presentation to the Most Serene King.

THE CATHEDRAL CHURCH OF NIVARIEN, or Saint Christopher of La Laguna, by order of the Most Reverend Doctor Hyacinth, Mary Cervera and Cervera, until now titular Bishop of Hypsopolis in Phrygia, for the presentation to the Most Serene King.

THE CATHEDRAL CHURCH OF RIPA, by order of the Reverend Joseph Ceppetelli, Priest of Rome. Who, born of legitimate, Catholic, and honorable parents in Rome, has surpassed the thirty-sixth year of his age. Ordained to the priesthood, and holding a doctorate in both Canon and Civil Law from the Roman University, as well as a doctorate honoris causa in the theological faculty, devoted to the sacred Congregation of the Council, and enrolled among the members of the theological academy, elected President of the pious union of Saint Angelo, and appointed as a deputy for spiritual exercises for women in the pious house of Saint Paschal, he has until now been a Canon and Parish Priest of Saint Angelo in Poro Piscium.

THE CATHEDRAL CHURCH OF TUDERTIN, by order of the Reverend Eugene Luzzi, Priest of Spoleto. Who, born of legitimate, Catholic, and honorable parents in Spoleto, and having surpassed the fifty-eighth year of his age, serves as a legal auditor in the Spoleto court. He is enrolled among the legal experts, judges, and examiners for the Synod, as well as among the visitators, and has been a Canon of the collegiate church of Saint Gregory the Greater, and successively in the metropolitan church. He has been a member of the Chapter, the Chamberlain of the Chapter, and until now, an Archdeacon.

THE CATHEDRAL CHURCH OF CASSENATE, by order of the Reverend John Mary Strocchi, Priest of Paveno. Who, born of legitimate, Catholic, and honorable parents in Fa-, veno, and having reached the eighth year beyond his fiftieth year of age. He serves as Prefect of the

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gymnasium and gives lectures on sacred Scripture, ecclesiastical history, and moral theology in the diocesan seminary. He is enrolled among the pro-synodal examiners.

THE CATHEDRAL CHURCH OF EUCERIN, by order of the Reverend Roch Anselmini, Priest of Recanati. Who, born of legitimate, Catholic, and honorable parents in Recanati, and having reached the forty-fifth year of his age. Enrolled among the students of the Pontifical Seminary of Pius in Rome, there he was ordained to the priesthood, and received a doctorate honoris causa in philosophy, sacred theology, and both Canon and Civil Law. He has been a Canon and Theologian until now, and serves as a professor of moral theology in the same seminary of Recanati, and of that city and diocese.

[*Latin ed. p. 388*]

388 FROM THE CONSISTORY ACTS, the general spiritual duties of the vicars are presently fulfilled as follows:

THE CATHEDRAL CHURCH OF VOLATERRA, under the patronage of the Reverend Father Joseph G-elli, a priest of Lucae. He, born of legitimate, Catholic, and honorable parents in Lucae, having surpassed the sixtieth year of his age, and having previously received the doctoral degree in sacred theology, has hitherto served as the Prior-Parish Priest of the collegiate church of Saint Alexander the Greater in that city. Having previously served as the professor of biblical exegesis in the archiepiscopal seminary, designated for ordinations, and appointed as a visitor for the archdiocesan visitation, he has also been included among the examiners and judges for the pre-synodal assembly.

THE CATHEDRAL CHURCH OF AQUILANUM, under the patronage of the Reverend Father Dominic Marinangeli, a priest of the archdiocese of Aquila. He, born of legitimate, Catholic, and honorable parents in the place commonly called Rocca di Cambio, in the archdiocese of Aquila, having reached the fifty-third year of his age, has been appointed. Having previously received the doctoral degree in sacred theology from the Gregorian University in Rome, and having been canonically invested, he has served as the professor of dogmatic theology in the archdiocesan seminary, has been co-opted among the pro-Synodal examiners, and has hitherto relinquished his position as a canon and theologian at the Chapter of Aquila.

THE CATHEDRAL CHURCH OF MANTEN, with the attached title of the Abbey Church of Saint Savior the Greater, vacant through the translation of the Reverend Father Angel Rossi to the canonically united sees of Cornetano and Centumcellarum, under the patronage of the Reverend Father Luciano, a Greek priest of the Order of Friars Minor Observant of Saint Francis, of the diocese of Reatina. He, born of legitimate, Catholic, and honorable parents in the land of Greece, in the diocese of Reatina, having reached the sixty-first year of his age, has been appointed. Having served as

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a lecturer in the faculty of philosophy, and subsequently giving theological lectures in Venice, he has fulfilled the duties of Custos and Secretary for the Provincial Chapter. Elected for several years as the Provincial Minister for his province of Umbria, he has hitherto relinquished his position as the custos of the Convent of Saint Mary of Angelorum, near Assisi.

THE CATHEDRAL CHURCH OF PREMISLIEN, of the Latin rite, under the patronage of the Reverend Father Luke Selecki, a priest of the archdiocese of Leopolis, of the Latin rite, by nomination of the Most Holy Emperor Francis Joseph I, Emperor of Austria, King of Bohemia and Hungary, in his apostolic capacity. He, born of legitimate, Catholic, and noble parents in the village of Yawcze, and in the parish of Zorow, in the archdiocese of Leopolis, of the Latin rite, having reached the forty-fourth year of his age, has been appointed.

[*Latin ed. p. 389*]

FROM THE HISTORICAL RECORDS, more than one year has passed. He has served as a professor of biblical studies of the Old Testament and of sacred theology at the University of Lviv, and has previously held the offices of Canon of the Metropolitan Chapter of Lviv, Rector of the Seminary for Clergy, and Pro-Synodal Examiner. In the Cathedral Church of Barcelona, with the favor of the Reverend Joseph Morgades and Gili, priests of the Diocese of Barcelona, he was presented to the Most Serene King. He was born of legitimate, Catholic, and honorable parents in the place commonly called Villafranca del Panades, in the Diocese of Barcelona, and has now surpassed his fifty-fifth year. He has lectured on canon law at the Seminary of Barcelona, and has served as a Canon Penitentiary in the Cathedral, and, when the See of Barcelona was vacant, was elected once, and then again, as Vicar Capitular, or Economus of the Metropolitan See. In the Cathedral Church of Toledo, with the favor of the Reverend Ferdinand Hue and Gutierrez, priests of the Archdiocese of Seville, he was presented to the Most Serene King. He was born of legitimate, Catholic, and honorable parents in the place now commonly called Zahara, under the Archdiocese of Seville, and has now reached his forty-eighth year. He has previously held the Canonry of the Gaditan Cathedral, and has also served as Provisor and General Vicar in spiritual matters for that diocese, once, and then again. In the titular Episcopal Church of Madaure, in Africa, formerly under the titular Archbishop of Carthage, with the favor of the Reverend Aloysius Bruno, priest of the Diocese of Policastro, who was also appointed as Coadjutor with future succession to the Most Reverend Vincent Materozzi, Bishop of Ruvo and Bitonto, Aloysius Bruno, having previously served as a professor of philosophy to the clergy in the Seminary of Croton and in the region of Naples, was elected as a Canon of the Chapter of Tricarico, and as General Vicar in spiritual matters for that city and diocese. In the titular Episcopal Church of Doren, in Palestine,

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with its perpetually and canonically annexed Priory of the four Military Orders of St. James of Alcantara, Calatrava, and Montesa, established and constituted in the city of Cluniae, or Ciudad Real, with the favor of the Reverend Anthony Cascaiares and Azara, priests of the Archdiocese of Caesaraugusta, for the nomination, by virtue of an Apostolic Indult, of the Most Serene King. He served in the Metropolitan Church of Caesaraugusta, providing benefices and canonries, and successively...

[*Latin ed. p. 390*]

FROM CONSISTORY ACTS 390, a man of honorable parentage, born in Rome, having held the dignity of Treasurer, then, having surpassed his sixtieth year of age, became Archdeacon of the Primatial Church of Toledo. He had previously been appointed Auditor in the metropolitan Church of Burgos, and had been sent as Apostolic Nuncio to Lisbon.

EPISCOPAL CHURCH OF LEUCEN. Located on the island of Cyprus, he has temporarily performed the duties of Governor under the Titular Archbishop, in service to the Holy See. He has also served in Argentina, within the Confederation, and in the territories of Uruguay and Paraguay, as Apostolic Delegate. He was also appointed as an Auxiliary to His Holiness' Domestic Prelates, and as Apostolic Protonotary ad instar.

EPISCOPAL CHURCH OF MYRIEN. Born in the city of Drohobych, within the diocese of Premisliensis, of legitimate, Catholic, and honorable parents, he surpassed his forty-fifth year of age. Among the canonical Chapters of Premisliensis, of the Latin rite, and the aforementioned pro-synodal electors, he was appointed, the Vicariate Capitular having been vacated. The aforementioned Reverend Ignatius Lobos.

EPISCOPAL CHURCH OF NANCY-TOUL. To which the title of Tullensis is attached, in favor of the Most Reverend Charles Francis of Turin, who had previously served as the Apostolic Administrator of Tarantasiensis, in honor of the most illustrious man, Julius Grevy, President of the French Republic.

EPISCOPAL CHURCH OF ZOAREN. Located in Palestine, in favor of the Most Reverend Joseph Alf ridi Foulon, who had previously served as the Apostolic Administrator of Nancy-Toul and Tullensis.

CATHEDRAL CHURCH OF NUCERIN. Located among the Pagans, in favor of the Titular Bishop, Francis Vitaliano of Cydonia on the island of Crete.

CATHEDRAL CHURCH OF TARANTASÏEN. In favor of the Reverend Peter Ioannis Pagis, a priest of the diocese of.

[*Latin ed. p. 391*]

391 FROM THE CONSISTORY ACTS, to the nomination of the most illustrious man, Julius G-revy, President of the French Republic. He, born of legitimate, Catholic, and honorable parents in the place commonly called

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Pleaux, in the diocese of Saint-Flour, was appointed in the forty-seventh year of his age. Having for many years served as professor of philosophy in the small seminary of his diocese, and having previously performed the office of parish priest in the town called Salers, also in the diocese of Saint-Flour.

THE EPISCOPAL CHURCH OF MAGADAN, in Carmania, with the favor of the Reverend Father John Francis Rux y Loras, was appointed as an auxiliary to the Eminence, Cardinal John Ignatius Moreno, Archbishop of Toledo.

THE CATHEDRAL CHURCH OF CARTAGENA, in the United States of Colombia in South America, with the favor of the Reverend Father Eugene Biffi, a priest of Milan, was appointed. He, born of legitimate, Catholic, and honorable parents in Milan, was appointed in the forty-third year of his age. Seeking America as a missionary, he fruitfully administered the care of souls in Cartagena, under the jurisdiction of the United States of Colombia, and taught the Catholic faith to those "barbaric peoples" in the province of Honduras. Appointed Apostolic Prefect for Eastern Burma, he converted many thousands of people to Christ.

In Caria, under the titular Archbishop of Stauropolis, also in Caria, with the favor of the Reverend Father Roch Leonasi, a priest of the diocese of Policastro, who was also appointed as coadjutor with future succession to the Most Reverend Father January Acciardi, Bishop of Anglonensis-Tursiensis.

A canon was appointed to the honorary position of Policastro in the cathedral, and among the extraordinary pro-Synodal members, the churches of NET AN and Centumcellae, forever canonically united in the homeland, with the greater Cantor-Parish Priest, until now, having renounced the office in favor of the Reverend Father Angel Rossi, of scopi Mandelensis.

THE CHURCH OF LAREM ALABANDEN. By a papal brief, the following churches were established: THE EPISCOPAL CHURCH OF DOLICHEN, in Syria, to the Reverend Father Francis Gandulfi, a resigning bishop of Cometan, and Centumcellae.

THE CATHEDRAL CHURCH OF OSNABRUCK, to the Reverend Father Bernard Holing, senior canon and capitular vicar of Osnabruck.

THE CATHEDRAL CHURCH OF "WRA-

[*Latin ed. p. 392*]

392 FROM THE ACTS OF THE CONSISTORY OF TISLAVIEN. His Most Reverend Robert, appointed to the apostolic administration, Prefect and Delegate of the Episcopal Church of St. Hedwig, titular Church of ABYDEN in Phrygia. Reverend Father Peter Caprotti, appointed as a vicarious. Titular Church of EVARIEN in Phenicia. Reverend Father Thomas

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Raymundo Hy land, canon and vicarious capitular of the same Cathedral. Reverend Father Nicolao Aloysius Gallagher, vicarious general of the Diocese of Columbus. From the Sacred Congregation of the Council for the Propagation of the Faith. On the second day of June, 1881. SUMMARY OF THE CASE. A vacancy having occurred in the position of cantor in the Collegiate Church of the Diocese of O., a scholastic, named Hyacinthus, from the diocese of C., presented his name in the list of candidates, and after the examination was completed, in the presence of the Ordinary, he was deemed most suitable, and, since the matter concerned the regional government, he obtained the nomination for the aforementioned position. However, since the reception of the clerical tonsure was required in order for Hyacinthus to obtain possession of the position, he approached the Bishop, so that he might be enrolled in the clerical militia. Nevertheless, the Bishop rejected the requests of Hyacinthus, for this reason, namely, that the Prelate of C. had indeed given his consent that the aforementioned might be promoted to the clerical tonsure and orders, but refused to grant the necessary testimonial letters. Therefore, Hyacinthus, lest he be rejected from obtaining the position due to the lack of the clerical tonsure, appealed to the Sacred Congregation.

[*Latin ed. p. 393*]

ORDINATION 393. A discussion concerning a particular circumstance which concerns Hyacinth. It is established by law that each person must be ordained only by his own Bishop, and that no Bishop can ordain someone from outside his diocese, nor even confer the tonsure upon him, without the testimony of his proper Ordinary, as is stated in Canon 1 and following, Dist. 72, and in C. Nullum Episcoporum, Quest. 2, and in cap. Hos qu. 2, and in cap. Episcopus, 4 titles, on the time and quality of ordination, in 6°. The Council of Trent, in Session 23, chapter 8, on Reform, states: "But each person must be ordained by his own Bishop. And if anyone should request to be promoted by another, this must not be permitted to him in any way, unless the integrity and conduct of the Ordinary are attested by testimony. This most salutary arrangement, having been neglected for a time, was restored to its former vigor by Innocent XII in his Constitution of November 4, 1694, *Speculatores domus Israel*, and is now strengthened with a more severe sanction. And all these things were rightly decreed, both to avoid disagreements that could arise among Bishops, if one were to presume to ordain the subjects of another, without the knowledge and consent of the other, Canon 1, Dist. 71, and also to prevent human failings, so that unworthy individuals are not promoted to the sacred Orders, who, otherwise, might presume to receive the clerical orders from foreign Bishops, which perhaps they would have been denied by their own Bishops, and without any knowledge of their defects, to their own ruin and to the disgrace of the ecclesiastical order." Reiffenst. Lib. 1 Decret., title XI, on the

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times of ordination, etc., § IV, no. 77. The Council of Barbosa, who in Alleg. IV, no. 41, on the office and power of Bishops, states that no one can be ordained by the Bishop of his diocese, unless first, with the consent of the prior Bishop, from whom he is required to obtain testimony regarding his morals, suitability, and birth, unless he has been transferred to the diocese from a younger age. And it is added that the consent of such a prior Bishop must be given in writing, Alleg. VII, no. 2, in the same place.

[*Latin ed. p. 394*]

394. It is not surprising if the Sacred Congregation has followed this course, especially in the case of Ascoli, on February 7, 1733. In these matters brought before the law, when it is established by fact that the candidate, having been recommended by his Ordinary, has been found wanting, it appears that he is flowing forth like a torrent, and that the aforementioned candidate cannot be promoted to the clerical tonsure by the Prelate. Furthermore, I do not wish to mention the consent granted by the Archbishop, so that Hyacinth might be admitted to the first tonsure and to the reception of orders, if it pleases the Bishop, to be considered equal to those who have been recommended, and to be supplied by him in this matter. However, it must be noted that the consent granted by the Archbishop is very different from the testimony by which, according to what is prescribed by the Council of Trent in the aforementioned place, the Ordinary is bound to commend the candidate's probity and morals. Furthermore, since the Council of Trent explicitly requires letters of recommendation from the Ordinary when promoting a candidate, it seems that the interpretation whereby this kind of consent substitutes for such letters cannot be admitted, as if it were the same thing as preferring the candidate himself. Where the law does not distinguish, neither should we distinguish; it is the canon in law that the less common is to be preferred. Therefore, in this case, the letters of recommendation should be expected before the candidate is promoted to the first tonsure, because it has been ascertained that the candidate did not behave well in the place of his origin, and that, on account of his conduct and manner of life, he was rejected from the reception of the Order by his Ordinary, as the Archbishop C. himself indicated in his information. "I, however," are the Archbishop's words, "said that I had refused to ordain Hyacinth in the year 1878, for reasons which, in my judgment, were reasonable... I considered it my duty to faithfully communicate the reasons which had prevented me from ordaining him." Since these things are so, it seems that the Bishop has acted rightly in denying the candidate the reception of the clerical tonsure.

WHAT IS FAVORABLE TO HYACINTH. Another, but on the other

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hand...

[*Latin ed. p. 395*]

Regarding the matter of ordination, it must be considered that, although it is undoubtedly the case that no one can be promoted by a foreign Bishop, either to the first clerical tonsure or to the orders, whether minor or major, without the consent and approval of his own Ordinary, expressed in testimonial letters; nevertheless, this matter should not be understood so strictly and rigidly, that in the absence of such letters, no ordination whatsoever can take place. Indeed, the Doctors of Trent, with the words they used in Session 14, chapter 2, concerning Reform, where they state that no Bishop can promote or ordain another's subject, without the expressed consent of his own Prelate, either to the sacred orders or to the minor orders, or to the first tonsure, conclude that the Bishop has the power to ordain another's subject, provided that he at least presents the expressed consent of his own Ordinary. And rightly so: since the goal that the Fathers of Trent set themselves with this prescription, can be achieved either through expressed consent or through testimonial letters; as is testified by Reiffenst. in *Liber 1 Decret*, title XI, on the times of Ordination, § Vnum, 110. Moreover, these authors go even further, and teach without any doubt that it is not necessary that this consent be written, but that it is sufficient that it be expressed verbally, provided that there is absolutely no doubt about its existence. With this principle established, and having discovered that the Archbishop C. not only verbally, but also in writing, gave his consent for Hyacinth to be promoted by the Bishop to the first tonsure and to receive the orders, it seems clear that the Bishop O. is empowered to confer the first clerical tonsure upon the aforementioned Hyacinth. This appears consistent with several declarations of the Sacred Congregation, as can be seen in the document from Messana, September 12, 1739, in the documents from Spoleto and Rieti, July 11, 1840, and especially in the document from Dientina, July 18, 1733, in which a similar, if not harsher, case was considered. It should also be noted that if Hyacinth were not admitted to receive the first tonsure, the reluctance of this Bishop, as well as the damage to Hyacinth's good name, would also...

[*Latin ed. p. 396*]

396. The gravity of the damage to the ordination was evident, since he would not be able to obtain possession of the new benefice, having acquired a certain right through the patron's nomination. Nor could it be argued that Hyacinth was not worthy to be admitted to the clerical militia, since the Archbishop of Alia had refused to ordain him in 1878. Indeed, the Archbishop openly declared to his informants that, since no certain crime had been committed by Hyacinth, nor had he been found to be subject to any censure or irregularity, he had given his consent to the Bishop of

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Orense, not only to confer the first tonsure, but also other orders, upon the aforementioned Hyacinth, if he deemed him worthy of this grace. It can be presumed that the aforementioned Hyacinth, during the two years of his residence in the diocese of Orense, behaved well and led a completely commendable life, as can be seen from the fact that the Bishop of Orense did not bring any complaint about his conduct to the Congregation [of Bishops]. Therefore, it is established that a subject from another diocese can be ordained by the bishop of the diocese, provided that he obtains express consent from the ordinary of his origin; it is established that in the case of Hyacinth, such consent was obtained from the Archbishop of Alia; it is also established that, from the day he began to reside in the diocese of Orense, nothing has been found in his conduct that would make him unworthy to receive the clerical tonsure and orders; therefore, it seems that the Bishop of Orense should admit Hyacinth, according to the opinion of the Archbishop of Alia, to the first clerical tonsure and to receive other orders. With all of the above stated, the following doubt was proposed: Can the Bishop of Orense confer the first tonsure upon Hyacinth, with the consent of the ordinary of his origin, without testimonial letters in this case?

[*Latin ed. p. 397*]

RESOLUTION 397 CONCERNING ORDINATION. The Sacred Congregation, having considered the matter, on June 11, 1881, decided to respond: Negatively.

FROM WHICH WE GATHER THE FOLLOWING:

I. Since each one must be ordained by his own Bishop, neither tonsure nor the sacred orders can be conferred by an external authority, unless the probity and conduct of that external authority are attested by written testimonies of his own Bishop.

II. It was established by the best of laws for the purpose of avoiding disagreements among Bishops (among whom mutual veneration and reverence ought to be fostered), and so that unworthy individuals, rejected by their own Bishops, may not be promoted to the sacred orders by others, ignorant of their unworthiness, to the detriment of their souls and to the disgrace of the ecclesiastical order.

III. Such written testimonies must be expressed in such clear terms by the law, so that no other remedy can suffice: where the law does not distinguish, neither *ought we to distinguish* (1).

IV. The granting of the tonsure was rightly denied in the case mentioned, due to the absence of the Bishop of Orense's written testimonies, because such consent, given in that manner, could in no way be equated with the aforementioned testimonies.

(1) Recall what we have gathered concerning testimonial and dismissive

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letters in the following appendix IV, page 398. If you desire more information, consult Ferraris, vol. 5, article 3, where the Constitution *Speculator et* and *Lucidi de Visitatione ss. Liminum* are cited, volume I, pages 114 and following.

[*Latin ed. p. 398*]

398 APPENDIX IV. CONCERNING TESTIMONIAL LETTERS AND DISPENSATIONS, AND REGARDING THE CAUSES BY WHICH A BISHOP BECOMES PROPERLY RELATED TO THE CONFERRAL OF HOLY ORDERS. The question recently raised on page 392, has afforded us the opportunity to say something regarding dispensatory letters and testimonials. And first, it is well known that these letters differ greatly from one another. For "dispensatory letters" express a granted permission, so that another Bishop may promote that cleric to the orders (1). Testimonial letters do not grant this permission; for it is presupposed that the ordination will be performed by another Bishop, not in need of the granting of this permission, but rather exercising his own right; they merely contain a testimony that the cleric to be promoted is worthy to receive such orders. Furthermore, dispensatory letters are given when the proper Bishop, being unable, due to some impediment, to confer orders upon his clerics, dismisses them to another Bishop for ordination (2). Testimonial letters, on the other hand, are granted in commendation of the morals of a subject, who, either by the force of an Apostolic Brief or a benefice, requests to be promoted to orders by another. There also exists another kind of testimonial, which is granted to traveling clerics; without which they are not admitted to perform the sacred rites in a foreign diocese, chapter Extraneo, and chapter Hortamur 71, dist. Ultima. However, this last kind has no relation whatsoever to receiving the holy orders from Bishops other than the proper one. Since, in the ancient and modern discipline of the Church, it is strictly forbidden for Bishops to ordain subjects who are not their own, it seems useful to inquire who is considered a proper Bishop, so that those who can only be ordained by him may be recognized. And regarding this (1) the proper Bishop must express in the dispensatory letter the reason for which he cannot ordain his subjects, according to the Council of Trent, Session 7, chapter 11: "Faculties for promoting are not granted unless to those who have a legitimate reason, by reason of which they cannot be ordained by their own Bishops, which reason must be expressed in the letters." These dispensatory letters are not to be accepted for longer than two months or three months, according to a decree of the Sacred Congregation in Aversa, December 4, 1666. (2) Bishops who dismiss their subjects for ordination to another Bishop, must dismiss them as proven. However, the ordaining Bishop is not bound to give heed to this attestation: The Sacred Congregation in a "Nullius" of January 17, 1695, responded: "It is possible for the ordaining Bishop, if he

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wishes, to give heed to the attestation of the proper Bishop, but he is not bound to do so."

[*Latin ed. p. 399*]

399. Pope Innocent X, however, in the Constitution *Speculatores domus Israel*, enumerates the conditions required for a Bishop to be able to ordain someone, considering him to be subject to him by reason of origin, domicile, benefice, and communion. This Constitution collected, confirmed, and amplified whatever had been established by law on this matter, and it emerged from the Sacred Council. With these things noted, it is certain, we add, that a Bishop cannot lawfully confer either tonsure or sacred orders on subjects who are not his, unless he has obtained, for various reasons, dismissal letters or testimonials. For the Council of Trent, Session 23, chapter 8, concerning reforms, states: "Let everyone, however, be ordained by his own Bishop. But if anyone seeks to be promoted by another, let this not be permitted to him... unless the testimony of his own Ordinary commends his worth and morals." APPENDIX. It is clear to no one that there is no controversy among the doctors concerning the common law, from which it is established that Bishops can be considered proper [i.e., legitimate] regarding those clerics to be ordained in four ways. Indeed, Pope Boniface VIII, in the Decretal *Cum nullus*, concerning the times of ordination, states: "No one should ordain a cleric of another parish, except with the license of his superior." Here, "superior" is understood in this case to be the Bishop, whose diocese is that of the cleric who desires to be ordained, or in whose diocese he holds an ecclesiastical benefice, or who has (even if born elsewhere) his domicile. From these words, it is clear that a Bishop can legitimately ordain someone in whose diocese the ordination is to take place, whether he is born there, or holds a benefice, or has his domicile. Also, the Council of Trent made provisions on this matter in Session 23, chapter 9: "A Bishop cannot ordain his own dependent [i.e., one under his authority], unless he has resided with him for three years, and immediately, for whatever reason, the benefice ceases, he confers [something] upon him in reality (1)." From this decree, it follows that, even through a three-year period of communion [i.e., shared life], a Bishop becomes, with regard to ordination, a proper, that is, legitimate, ordainer. Pope Innocent XI, in the aforementioned Constitution, § 7, states: "Furthermore, a cleric who has been legitimately promoted by his own Bishop to the same clerical tonsure, or even to higher orders, cannot be promoted to higher orders by another Bishop, by reason of and by the title of any benefice obtained in that diocese, unless (1) Within one month from the day of ordination, the ordaining Bishop must confer a benefice, sufficient for living honorably, by

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the title of familiarity."

[*Latin ed. p. 400*]

APPENDIX IV.

4. Before the reception of such [clerics], nor testimonial letters from the proper Bishop, both of origin and residence, concerning their birth, age, morals, and life, having been granted to them, these must be presented to the aforementioned court and preserved in its records. Furthermore, Pope Pius IX, acting in accordance with the aforementioned legal provisions, declared in the Apostolic Constitution *Speculatores* that the suspension of a Bishop is reserved to the Supreme Pontiff by the very fact [of the transgression]. "Indeed, a Bishop incurs suspension if he ordains a cleric who is subject to another, even under the pretext of conferring or having already conferred a benefice, but one which is by no means sufficient (1)." Therefore, from the aforementioned Constitution *Speculatores*, it is clear that testimonial letters from the proper Bishop are required, so that a cleric, legitimately promoted to the first tonsure, or even to higher orders, by his own Bishop, may be promoted to further orders by another Bishop, by reason of and title to some benefice obtained in that diocese (2). All of this is confirmed by a resolution given by the Sacred Congregation in Pienza, on July 1, 1733 (3). The Bishop of Pienza had already conferred the lower orders upon Lawrence Medicheschi, by reason of his being subject to him in origin and residence. Lawrence obtained a benefice in the diocese of Montalcino. From the court of Pienza, neither dismissal letters nor testimonial letters were given to him, but letters of the following tenor: "We testify that Lawrence Medicheschi is a cleric of our diocese, and has received the lower orders, without any excommunication, irregularity, or other impediment (1)."

(1) The Bishop incurs suspension if he ordains a cleric with a benefice insufficient for leading an honest life, without the dismissal letters of his own Bishop. For he ordains a cleric subject to another, under the pretext of a benefice already conferred, but by no means sufficient. Indeed, Innocent XII states in the Constitution *Speculatores*, which remains in force with regard to ordinations: "Although a cleric, by reason of some benefice obtained in another diocese, may be said to be subject to the jurisdiction of the Bishop in whose diocese he is located, nevertheless, we wish this rule to be observed without exception henceforth, so that no one may consider that such subjection is acquired for the purpose of receiving orders, unless the aforementioned benefice is of such a revenue that it suffices by itself for a suitable support of life."

(2) The Constitution *Speculatores* did not require testimonial letters for a cleric to obtain a benefice in another diocese; therefore, it can be said

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that if it had wished to do so, it would have expressed it. However, there are Bishops who often inquire about such letters in order to foster mutual respect among themselves, as is fitting, even for the conferral of benefices that are worthy or more worthy.

(3) In Volume VI, page 498, the entire question was related; in the treatment of which, many things are discussed that pertain to dismissal and testimonial letters.

[*Latin ed. p. 401*]

APPENDIX IV. "Bound by a mental tie, at least as far as we know, it exists, without any demand for it, and it is fitting for those who are called to such a fate." The Bishop of Ilcinensis ordained *Laurentium* for all the sacred orders, by reason of and with the title of a benefice, which he obtained in his diocese. The Bishop of *conquestus* wrote to the Sacred Congregation, questioning the manner in which the Bishop of Ilcinensis proceeded with the ordinations, not concerning the benefice conferred, but concerning the lack of testimonials, and stated that, "If the matter concerns testimonials, I do not deny that they were granted to the cleric *Laurentius Medicheschius* by my court, shortly before his departure, as is granted to all clerics who request them, especially those who are about to depart; but they are limited to matters of conduct and, in no way whatsoever, with respect to the reception of orders, concerning which there was no thought whatsoever." Regarding this matter, the following questions were proposed to the Sacred Congregation: I. Whether the cleric *Laurentius Medicheschius* was lawfully ordained for the title of the benefice in question. II. Whether the aforementioned *Laurentius* was lawfully promoted to the sacred orders by the Bishop of Reinen, in whose diocese the said benefice is located, without the dismissal letters from the Bishop of Pientinus. III. Whether the testimonial letters which the aforementioned *Laurentius* obtained from the Bishop of Pientinus were sufficient for a lawful ordination. IV. Whether those who conferred the orders and those who received them incurred the penalties established by the Sacred Council of Trent and by the Bull *Speculatores*, in this case. The same Sacred Congregation responded on July 18, 1733: To I. Affirmative. To II. Affirmative. To III. Affirmative, in the case in question. To IV. Negative. However, the Sacred Congregation receded from this resolution, when on August 8 of that same year, 1733, the same question was again raised under the doubt: Whether, concerning the third and fourth doubts, one should adhere to or recede from the decisions of July 18 of the preceding year. In this case, the Sacred Congregation responded on August 8, 1733: Concerning the third doubt, one should recede from the decisions; concerning the fourth, consult one's own conscience. From this resolution arises: (1) That commendatory letters are general, and not special, and are not directed specifically to the reception of orders. (2) According to the Constitution *Speculatores*, § 8, a cleric, by virtue of a

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benefice, is subject to the jurisdiction of the Bishop in whose diocese the benefice is located. Hence, in the case of Telato, when responding to the first and second doubts, the Sacred Congregation resolved that *Laurentius*, by virtue of the title of this benefice and without dismissal letters, had been lawfully ordained. For, by the conferral of the said benefice, *Laurentius* was already subject to the jurisdiction of the Bishop.

[*Latin ed. p. 402*]

402 APPENDIX IV. It is not necessary to seek letters of testimonial to prove that a benefice is simple; but from the same documents, for the purpose of conferring a benefice: but see Constit. Such documents should be those which are entirely necessary to receive the revenues of the benefice and which are sufficient for the proper support of the life of the recipient, as was stated in the decree issued in Laquedonia. "We can, from Bitonto, argue that letters of testimonial should be rare, and that they should be obtained from the Bishop of the origin, even if someone has left that place, at such an age that no impediment could have arisen against him; and therefore, in the case of those born of the natalities, and not of a mere cappellania, the Bishop should not require letters of origin. Now, something must be added concerning the four causes by which someone becomes subject to a Bishop, so that he may be lawfully ordained. And first, by the acquisition of a benefice, peacefully possessed and sufficiently endowed. But the Bishop of a benefice confers orders without letters of testimonial from the origin, as stated in Constit. Speculatores §. 8... And in the case of a Bishop ordaining someone, whether he has the aforementioned letters of testimonial, or not, the following must be considered: If the father at the time of the birth of the son had a domicile somewhere, or not? If he had a domicile, the son will be of the origin of the father's domicile, whether he was born there or not; if the father had no domicile anywhere at the time of the son's birth, then... According to the practice of the Secretariate of the Vicariate, chapter i, page 16, the following rule is given: "The general rule for finding the origin for the purpose of conferring orders is this: if a son is born, whether the father at that time had a domicile somewhere or not..." The Bishop, when ordaining, must express in the customary attestation of the conferring of orders, concerning the aforementioned letters, as well as concerning the revenues of this kind. The letters of testimonial are entirely required by the Bishop of the origin or domicile; nor could those letters, with which Lawrence was endowed, have been considered sufficient. From the response given to the fourth question, it appears that both the ordaining Bishop and the one being ordained may incur penalties established by the Council of Trent and by Constit. Speculatores §. 8; there, the ordaining Bishop incurs the penalty of the deprivation of the conferring of orders for a year, the ordained incurs the penalty of the execution of the orders received, as long as it seems expedient to his proper ordinary, and he is

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thereby suspended...

[*Latin ed. p. 403*]

403. He shall affirm by oath that he intends to remain there permanently. The fourth cause of subjection to the Bishop is familiarity; from which it follows that the Bishop can ordain a person who is not his subject, provided that he retains him in his service for three years, and furthermore, supports him at his own expense. From the Constitution *Speculatores*, it is required that the three years be complete and entire, and that testimonial letters from the Bishop of *Orense* regarding his origin and domicile be present; so that the Bishop ordaining may grant him a benefice, which is sufficient for his support, at least within one month from the day of the ordination. If, as we noted above, said benefice is in no way sufficient, then the Bishop does not acquire the subjection of the cleric to be ordained; and he could not proceed to the ordination without dismissal letters in this case. Finally, it is required that in the certificate of ordination, mention be made, both of the title of familiarity, and of the testimonials of his own prelate. With regard to the effect of what we are discussing, that person is considered a familiar who serves the Bishop, resides in his house, and is under his authority. He is considered to be of the origin of the place where he was born (1), that is, of the place in which he was naturally born, unless the father, having been born in a place where the son was born by accident, subsequently acquired a domicile there by law; which, as is stated in the aforementioned Constitution *Speculatores*, and as is clear from the above, is the case. The third cause of subjection to the Bishop is a certain domicile within his diocese; but only if the person to be ordained has left the place of his origin at an age when he could have been subject to some impediment (2), or if he has resided in another place for a notable time by accident, then testimonial letters from the Bishop of his origin, or of his accidental domicile, are necessary, according to the Constitution *Speculatores*. From this Constitution, it emerges that three things are principally required by Innocent XII in order to acquire a stable domicile for the priesthood; namely, that someone either establishes a domicile in a certain place and resides there for ten years, or places the greater part of his property there with a house, and resides there for a notable time (3); and that he...

(1) The origin of the mother is not considered in relation to receiving orders, according to the Sacred Congregation in *Dub. Ordin.*, February 26, 1704, Ferraris v. Ord., art. 3, n. 19.

(2) It seems that the age at which a person is capable of incurring impediments is that which exceeds childhood or the age of seven. Because such an age is capable of deceit; and it is commonly considered that those who have this age can incur penalties established by law or by men.

(3) It is considered that three years in this case can be considered a notable time, taking the argument from the three years determined so that

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the Bishop may ordain his familiar.

[*Latin ed. p. 404*]

404 APPENDIX IV. are sustained by expenses. Hence, nephews and relatives of bishops, living with him, are sustained by his expenses, unless they simultaneously serve the regular clergy, and cannot, without the permission of the proper bishop, be admitted to the regular orders according to chapter 3 of the decree *Abbas* concerning dispensations, under the title of privileges of familiarity, as decreed by the Council of Trent, Session 23, concerning reforms, chapter 10; see the decree of Brixen, September 11, 1608. Among the more recent resolutions which demonstrate the prudence of the law, we find the words in the decree of Clement VIII in 1596 and in the Constitution of Benedict XIV, *Impositi nobis*, "but such a privilege can only pertain to those truly and properly belonging to the regular orders, namely, those who emit solemn vows." The students of the Institute are not to enjoy this regular privilege, unless a special dispensation has been granted by the Apostolic See. However, we add, with the testimony of the Superior of the house, that the Congregation for Charity, concerning which we have spoken, does not seem to enjoy such a privilege; therefore, that member must present to the ordaining bishop either letters of dispensation, or testimonials from the bishop of origin, or from the bishop of origin or domicile.

DECREE. On June 11, 1881.

COMPENDIUM OF THE CASE. In the year 1876, Brother Benedict was elected as a chaplain in the parish church, with the obligation of celebrating the Holy Mass on feast days, hearing confessions, and participating in the activities of the confraternity of the Most Holy Mary of Dolors.

[*Latin ed. p. 405*]

DECREE 405. For a certain period of time, matters between him and the parish priest had proceeded peacefully; however, in the year 1879, disagreements and discord arose between them regarding the time at which each of them should offer the Sacrifice of the Mass. For Father Benjamin maintained that, as chaplain of the confraternity, he had the right to celebrate the Mass according to the established regulations of the pious confraternity, between the hours of seven and nine; whereas the parish priest, adhering to local custom, insisted that, at that hour, the Holy Sacrifice should be celebrated by him, as that hour was more suitable for the explanation of the Gospel, due to the greater attendance of the faithful. This difference in opinion led the parish priest to celebrate the first Mass on Sunday, February 9, 1879, in order to explain the Word of God to the people and to announce the Holy Jubilee proclaimed by the Supreme Pontiff, hoping that the chaplain of the confraternity would celebrate the second Mass around midday, for the convenience of the faithful. But the chaplain, withdrawing to a private

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oratory, celebrated Mass there, to the great admiration and scandal of the faithful, many of whom were unable to fulfill the ecclesiastical precept for that reason. Recognizing that it was absolutely necessary, for the good of the parish, that the parish priest should celebrate the first Mass, the Archbishop ordered Father Benjamin to celebrate the last Mass, except on certain solemn days, according to the usual custom, around midday, on the other feast days. Father Benjamin, as chaplain, sent a notification announcing the Mass, and celebrated Mass again in the private oratory on the next feast day. From this arose the fact that, since the Mass was no longer celebrated around midday in the parish, greater disturbances were caused in the town, to the great scandal and detriment of the parishioners. And so matters proceeded, that the parish priest, fearing that the disturbances would be renewed, and to avoid greater evils that might threaten him through the instigation of his adversaries, left his residence. Then the Archbishop declared Father Benjamin subject to suspension. However, various circumstances occurred on April 27 of the same year.

[*Latin ed. p. 406*]

406 A decree was issued, by which, while the suspension from hearing confessions remained in effect, Father Benjamin was granted the faculty to once again celebrate the sacraments. However, considering himself burdened by this most recent decree, on September 5th of the year 1879, Father Benjamin appealed to the Sacred Congregation of the Council, requesting that he be restored to the hearing of confessions.

SYNOPTIC DISCUSSION OF THE RIGHTS OF FATHER BENJAMIN. The advocate sought to demonstrate, with both external and internal arguments, that the decree of the Archbishop, by virtue of which Father Benjamin was suspended from hearing confessions, was not valid. And first, addressing the external arguments, he observed that the suspension should be declared null and void, since it does not appear to have been imposed through proper legal procedures. Indeed, the Council of Trent, in Session 25, Chapter 14, concerning Reforms, prescribes that if any religious [person] commits a fault publicly outside the cloister, the superior religious [person] must admonish the bishop, so that he may severely restrain him with penalties; and only in the case where the superior neglects to punish him, may the bishop proceed to impose canonical penalties. From this, and from what is handed down by Barbos, in *Apostol*, decision 297, number 8, to which the Sacred Congregation of the Council also adheres in the decision cited there, it follows that the bishop, having knowledge of the crime of a religious [person] committing a fault within his territory, must transmit information to the superior and set a deadline for the subordinate to be punished. It is clear from the records that the Archbishop imposed a penalty on Father Benjamin without consulting the superiors of his religious order; therefore, there is

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no reason to doubt the invalidity of his decree.

However, besides the external arguments, there are also some internal arguments that indicate that this suspension cannot be maintained. Indeed, it is a principle of law: no one should be punished without fault, unless there is a cause. Father Benjamin, in no way, whether towards the curate or towards the Archbishop, was without fault, and had no part in the movements that occurred repeatedly.

[*Latin ed. p. 407*]

It is clearly evident that, among the townspeople, opposition arose against him. However, Father Benjamin does not appear to be blameworthy for this, since he refused to obey the order of the Bishop, who had decreed that Mass should be celebrated around midday on feast days for the convenience of the people. For the accuser contends that such a decree of the Archbishop constituted an attempt at robbery, since it had been determined that, in accordance with the constitutions and the established custom of the sodality, the right to celebrate Mass around the seventh or ninth hour belonged to him and not to the curate. Although the burden of celebrating Mass around midday was placed upon Father Benjamin, he argues that he was excused from this obligation because he sent a messenger to the chaplains and because his infirm health prevented him from reciting Mass at the time appointed by the Archbishop. Indeed, the law states that no one should be compelled to do what they are unable to do. *Leg. si pupilli ff. de negot. gest.* Therefore, considering that Father Benjamin is entirely without fault, it follows that such a decree, being an excess of authority, is most harmful to the good name of Father Benjamin and lacks any solid foundation.

THE RIGHTS OF THE ARCHBISHOP. Nevertheless, it is certainly known that the granting of permission to secular priests, whether diocesan or religious, to hear the confessions of lay people is entirely subject to the judgment and conscience of the Ordinary, within the boundaries of whose diocese the confessions are to be heard. This is evident from the decree of the Council of Trent, Session 23, Chapter 15, concerning Reforms, where the Holy Synod decrees that no religious, not even priests, can hear the confessions of lay people, nor can they be considered suitable for this purpose unless they have obtained either the permission of the Bishops through examination... and approval, which is freely given. Furthermore, just as it is within the power of the Bishops to limit such permission with regard to places, persons, and time, so too they can, with just cause, withdraw it.

[*Latin ed. p. 408*]

408 The cause for the revocation of the decree is entirely this: as testified by St. Charles Borromeo, who in the Council of Milan, Session VI, concern-

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ing those matters pertaining to Holy Confession, decreed – there – that the Bishop should suspend or completely remove confessors, even religious confessors already approved, whom he has seen not to conduct themselves with sufficient sincerity, integrity, and edification in that office, as the sanctity of the ministry entrusted to them and the salvation of souls, to which they have been entrusted, demand. Furthermore, Van Espen, book 2, title 6, paragraph 26; Gury, *Tractatus de Poenitentia*, paragraph 560, question 3 and 4, state this. Therefore, the approval of the Bishop, with regard to hearing confessions, is so necessary that it must be obtained not only from secular priests, but also from religious, even those exempt [from ordinary jurisdiction]; so that those who do not request it from the Bishop, or who, despite the Bishop's opposition, proceed to hear confessions, can be compelled by the Bishop to comply with the Constitution of the Blessed Pope Gregory XV, *Inscrutabili Providentia*, concerning the administration of the Sacrament of Penance, and can be punished with the remedies of law. Therefore, considering the circumstances, it seems imprudent for Father Benjamin to request reinstatement to the hearing of confessions. Indeed, it is known that the Archbishop, due to his reluctance and because of the poor manner in which he conducted himself, was suspended from exercising this ministry and was completely prohibited from doing so. Moreover, according to the Catechism from the Decrees of the Council of Trent, addressed to Parish Priests, paragraph 55, the confessor should be such a person whose life, doctrine, and prudent judgment commend him to all. For, as St. Thomas wisely observed, *Supplementum*, page 34, paragraph 4 – there – if a man's life is disapproved of, it follows that everything spiritual offered by him will be despised. Indeed, if the life and conduct of Father Benjamin are considered even for a short time, it will certainly appear that he is not such a person as the sacred canons and salutary laws of the Church require of confessors. Moreover, from the history of the facts, it is manifest that he, not once, nor twice, but repeatedly, displeased the Archbishop.

[*Latin ed. p. 409*]

The warnings and mandates of Decree 409 of the Bishop have caused great scandal among the faithful and have diminished their spiritual well-being. Furthermore, from the same account of events, it becomes clear that these decrees were the cause of such serious disturbances and unrest among the townspeople that the parish priest was forced to flee. Consequently, the Prelate was compelled to resort to spiritual penalties in order to restrain him in his office. It may be objected that the Archbishop's decree is invalid because it is not within the Bishop's authority to prescribe to simple priests the hour of the Mass to be celebrated on feast days for the benefit of the faithful. However, the Sacred Congregation of Bishops and Regular Canons, in response to a request made on January 18, 1578, stated that priests, even those who celebrate Mass solely out of their own

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devotion, must observe the hours of the Church for the common good. Braschus, in his *Promptuarium Synodale*, chapter 87, number 2, adds this reason: "because priests are promoted not only for their own benefit, but also for the benefit of the Church and the people." This is also taught by Ceccop. in his *Lucubrationes Canonicae*, Book 3, title 2. The Holy Congregation of the Roman Curia, in a decree issued in Urbisvetana on April 19, 1778, in response to the question: "Whether and at what hour the rector of the chapel of Mercy is obliged to celebrate Mass on weekdays and feast days," answered: "He is to be held to the hour designated by the Bishop." However, it seems that this matter should be decided with greater consideration, since, according to the Archbishop's information, the first Mass, which is usually celebrated between the seventh and ninth hours, is particularly suitable for the explanation of the Gospel, and due to the greater attendance of the faithful, it has always been celebrated, not by the chaplain of the chapel, but by the parish priest. Therefore, given what has been established both in fact and in law, it seems undoubtedly that the decree issued by the Archbishop against Father Benjamin must be maintained in all its force.

[*Latin ed. p. 410*]

410 DECREE. Therefore, according to the judgment of the E. E. P. P., the matter was referred to be resolved: Whether the decree of the Archbishop of T., dated April 27, 1879, should be confirmed or annulled in this case. RESOLUTION. The Holy Congregation, on June 1, 1881, having considered the matter, responded: The decree is to be confirmed, and furthermore. FROM WHICH THE FOLLOWING IS GATHERED: I. Secular and regular priests, in all matters concerning the care of souls and the administration of the sacraments, are subject to all manner of jurisdiction, visitation, and correction by the diocesan Bishop, without any derogating privilege. II. Therefore, it is within the power of the Bishop to grant, deny, and limit the faculty of hearing sacramental confessions; and to remove confessors, even regular, who have already been approved, if he sees that they do not conduct themselves properly and with due regard for the sanctity of the ministry, which is entrusted to them, and for the salvation of souls. III. Indeed, it is clear that a confessor ought to be such that his integrity of life, doctrine, and prudent judgment commend him to all; and that whatever spiritual things he offers should be held in esteem. IV. From the history of the facts, it has emerged that the conduct of Father Benjamin was not commendable in sincerity and integrity for so important a ministry entrusted to him; since he himself fostered discord and hatred among the townspeople, encouraged scandals, and disregarded the mandates of his superior. V. Bishops can reasonably take precautions to prevent any Mass from being celebrated before the parochial Mass, in order that the people may attend the usual parochial Mass and the sermon given therein by the

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parish priest. (1) See Volumes II, page 297; III, page 92; IV, page 250; XI, page 595.

[*Latin ed. p. 411*]

411 MARRIAGES. On the 1st of June, 1881. SUMMARY OF FACTS. Nicholas, of the Diocese of N., promised Anne, the wife of Joseph, who was ill in Rome, to perform the role of godfather in the sacred confirmation of Syria, her daughter. However, when the day of the confirmation arrived, and Nicholas was unable to fulfill that duty, it is said that he gave a mandate to Hyppolitus, to confirm the child in his place, and to act as godfather; although it appears from the parochial records that Nicholas himself held the child. After some time, Anne's husband passed away; and Nicholas, on the 31st of March, 1880, with the announcements dispensed, secretly contracted marriage, in a religious form only, with Anne, who was a widow, in Culmore. However, after a few months, Nicholas regretted having entered into this marriage, and declared it null, seeking refuge with the Episcopal Curia. The Bishop, after completing the procedural proceedings, rendered a judgment in which he declared the marriage null. An appeal was interposed by the defender of the marriage, and the case was brought before the Sacred Congregation of the Holy Office. Synopsis of the Argument. The defender of Nicholas stated that the Council of Trent had ordered that spiritual kinship, with regard to the nullity of marriage, be limited to only five persons, as stated in *VIRI DEFENSIO*, Session 24, chapter 2, concerning the *res format*. "Likewise, that kinship which is contracted through confirmation, does not extend to the one being confirmed, and the one confirming, nor to the father and mother of either; but all impediments among these persons are entirely removed, among the other impediments of this spiritual kinship." Therefore, the defender argued, an impediment already existed between Nicholas and Anne at the time the marriage was initiated on March 31, 1880, according to the degrees prescribed by the Council of Trent, since Nicholas had been the godfather of Anne's daughter, Syria, in the sacrament of confirmation on October 26, 1879, as evidenced by the parochial records, and the records of confirmations in the Curia of N.

[*Latin ed. p. 412*]

412. CONCERNING MARRIAGES. Moreover, the force of the books must be added, for it is clear that Nicholas was not present at the sacrament of Sirius, but Hyppolitus, his procurator. If it were stated in the books that Hyppolitus was the godfather, one might perhaps suspect that this was true, for Hyppolitus could have held Sirius, either personally or even through another. However, since it is clearly established that Nicholas was present materially, and that Hyppolitus was present as godfather to each other, it must be concluded that it ought to be established in the very

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act of the sacrament that Nicholas was the godfather, and Hyppolitus, his representative. In truth, the parish priest, as he asserted in the examination, was accustomed to register in the parish book the name of the boy to be confirmed, the paternity and maternity of the boy, and the name of the godfather, when he delivered the certificate of confirmation. He certainly did this in the case of Sirius, when Hyppolitus, on the morning of the confirmation, read the certificate delivered to the parish priest and held in the hands of the boy, where the name of Nicholas was written as godfather. Therefore, Nicholas, or someone acting for him, ought to have told the parish priest that he was the designated godfather of the boy, in the absence of the father, even though he could not personally perform the function, because he had to be present at the collegiate church; and therefore, the parish priest, unaware of all these things, previously wrote the name of Nicholas as godfather on the certificate of confirmation, and then registered in the book of confirmations that Nicholas was the godfather, consistently with the books of the Curia. Not only did Nicholas inform the parish priest before the sacrament that he was the godfather, but he also presented to the parish priest a mandate from Hyppolitus, which Hyppolitus himself saw shortly before the confirmation, as he affirmed as a witness. Another witness testified that, shortly before the confirmation, he heard Nicholas imploring Hyppolitus to act as godfather for him. Hyppolitus, under oath, testified that he did this by order received. Indeed, the mandate was delivered in writing, as Hyppolitus and the other witness jointly asserted, having seen it shortly before the confirmation, delivered by Nicholas to the parish priest.

[*Latin ed. p. 413*]

MATRIMONY 413. But, even if the power were granted only verbally, the delegated authority would be of no less efficacy, since the mandate is a consensual contract, which, unlike other contracts that require written form or a specific thing, is perfected solely by consent. Therefore, marriage, with its legal consequences, can be contracted as a more solemn and weighty sacrament through a proxy appointed verbally, as stated by Boss, *de matr.*, cap. 3, no. 303; Sánchez *de matrim.*, disp. 11, no. 14; Constant, *votum decisivum*, vot. 526, no. 3; and Quitierez, *de matr.*, cap. 43, no. 16. Furthermore, while, according to the laws of the common forum, a mandate is perfected solely by consent, for the sacred confirmation of marriage, a special derogating law should exist, requiring the mandate to be in writing, which, of course, has never been the case. Nicholas, however, renounced the office, and only his brother-in-law, Nicholas, testified to this. Therefore, since he was the only witness, and, according to the examination by the Benedictines, his testimony contradicts the sworn deposition of Hyppolitus, it is problematic. Moreover, Anne, when questioned, did not speak of this renunciation; indeed, she also stated something that certainly con-

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tributed to the validity of her marriage. Furthermore, the defender stated: "There is no valid and well-founded objection, by which it is alleged that Nicholas did not assume the spiritual obligation, because he did not hold Sirius himself, but through a proxy." There was once a significant question among Theologians and Canonists regarding who contracts the spiritual obligation, in the case where someone gives a mandate to a proxy to hold a child in baptism or confirmation. However, the Sacred Congregation, in Verona on March 29, 1582, and again in another decree on March 15, 1631, after discussing the matter, declared that the one who gives the mandate, and not the mandatary, contracts the spiritual obligation. For, after stating in one resolution: "He who lifts or holds, in the name of the proxy, does not contract any spiritual obligation," in another, more precisely defining the effect of the obligation, it taught: "The proxy does not contract the spiritual obligation for himself, but for the one who gives the mandate." This is the opinion.

[*Latin ed. p. 414*]

414. Regarding MARRIAGES, the Holy See has adopted the position previously expressed. This is based on a decree from the Congregation, specifically from Verall, Decree 147, number 3. If, however, one were to deviate even from these decisions of the Holy Congregation, as Pontius states in *De Sacro Matrimonio*, book 7, chapter 79, number 10; Scavini in *Compendium Theologicum Morale*, book 3, treatise 12, on the Sacred Sacrament of Marriage; and St. Alphonsus Maria de Liguori in *De Baptismo et Confirmatione*, book 6, number 153; (1) all of whom are more recent theologians, they maintain that only the principal party, or the one who is obligated, contracts the spiritual relationship. They state that this opinion is more common. Indeed, the Council of Trent teaches that he who is designated to receive the Sacrament contracts the spiritual relationship. Furthermore, it should be noted that the principal party does not actually perform the action, because, according to the law, he who acts through another is considered to act himself. However, the canons are less objectionable, as they seem to imply a personal action on the part of the godfather with the words "touch," "receive with his own hands." Since these actions, even if performed through a proxy, appear to be done by us; just as someone is said to confess through a proxy, and to swear an oath. The theologians adhere to the canonists, and among others, Nicol in *Lucubrationes Civilia et Canonica*, book 1, title 10, impediment 4, verse. Also, Engel in *In Ius Canon*, book 4, title 11, on spiritual kinship. Therefore, given this impediment, there is no doubt that the marriage is null, the advocate concluded.

OBSERVATIONS OF THE DEFENDER OF THE SACRED BOND. The defender noted that the arguments presented to prove the invalidity of the marriage were flawed, incomplete, and highly suspect. Indeed, what is read

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in the parochial registers is also found noted in the books of confirmations kept in the Curia of the Bishopric N.; therefore, the Curia and the parish priest maintain that their testimony is one and the same. The Curia noted in its books what was written on the prepared document (1). It is important to note the opinion of St. Alphonsus: he is an eminent Doctor of the Church, and it is safe to follow his teaching, as the Holy Penitentiary has responded. Please recall, Volume I, page 497. Appendix XVI, concerning the judgment of the Holy See regarding the works of St. Alphonsus Maria de Liguori.

[*Latin ed. p. 415*]

MATRIMONII 415, delivered by the priest and the boy, so that it might be presented to the Bishop for confirmation. Indeed, in order that this might fully demonstrate its validity, it was necessary that it be neither incomplete nor suspect. However, the document drawn up by the priest is incomplete, since it does not state that the godparentship was fulfilled by a proxy, as is commonly done. It is also suspect, because when questioned, the priest, whose name is Nicholas, to whom the writing refers as having written the name of the godparent, responded: "I do not remember anyone asking me to note the name of Nicholas in the registry." Furthermore, this is highly suspect, the defender argued, because it concerns a matter of fact, and a matter that occurred recently, namely, five months ago. The suspicion surrounding this matter grows, because, although the priest registered Nicholas as the godfather of Siri, he then joined Nicholas with Siri's mother in marriage, when he could not, nor should he, have been ignorant of the spiritual relationship that had arisen between Nicholas and Siri's mother, if he had believed that Nicholas, the boy, held Siri during the confirmation. Nor, the defender continued, did the registry omit anything: for he argued that such a double omission, within so short a time, concerning a matter that has caused talk in the town, is not to be presumed. Therefore, he concluded, nothing can be proven from the document received for confirmation, as it was drawn up by the priest. Nor do the witnesses seem to prove anything; rather, it can be deduced from their testimonies that the mandate was given to Hyppolitus by John, the brother of the aforementioned Anne, since he himself was designated as the godfather of Siri, after Nicholas refused to be his godfather. This, he himself stated in the examination conducted before the Vicariate, although extrajudicially, because he is a relative of Anne. These matters relate to the history of the facts; however, with regard to the law, it is evident that the question is complex and doubtful, whether the one giving the mandate, or the one receiving it, incurs a spiritual relationship in the sacred confirmation. Therefore, he argues that the impediment arising from the office of godfather exercised by a proxy does not arise against the one giving the mandate, because it is doubtful whether he himself incurs

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a spiritual relationship. And this is even more so because...

[*Latin ed. p. 416*]

416. An impediment to marriage is something hateful and requires a certain cause and a most evident right. Indeed, the defender noted that Theologians and Canonists in such cases do not remain silent, and yet they strongly maintained, as a probable opinion, that in this case, no spiritual affinity is contracted. Moreover, Navarrum, Council 6, book 4, title on affinity, urges that this opinion is truer in the matter of law. Thus, Leander de sacram., Vol. I, tract. 2, disp. 7, Di Castillo de Sacram., Volume 1, Diana, and others. Since it appears to be so in law, he adds that it is not possible to contract spiritual affinity, because it is defined that the procurator does not contract affinity. Briefly, it is certain from the Council of Trent that spiritual affinity is contracted between godparents and the godchild. But it is also certain in fact that Nicholas did not hold the boy Sirius in confirmation. Hence, it is clear that the parents of the child did not contract spiritual affinity. Nor did Nicholas hold the child through a procurator, 1. because it is not clearly established by the facts, 2. because even if this were admitted, there is a great doubt in law whether such an affinity is contracted, and in doubt, one must stand for the exclusion; unless, for caution, a dispensation must be sought, because we are dealing with the validity of the sacrament, for which, in every doubt, one must always give the decision. With these things presupposed, the following point to be elucidated was: Is the judgment of the Court to be overturned? Is the Episcopal judgment to be confirmed? Or RESOLUTION. After deliberation, the Holy Council, on June 11, 1881, responded: The judgment is to be confirmed.

[*Latin ed. p. 417*]

417. MARRIAGES FROM WHICH CONCLUSIONS ARE DRAWN: I. A most common and truer opinion is held with Fagnano and Sánchez, which maintains that spiritual affinity is contracted solely by the one giving the mandate, when a child is received in a procuratorial capacity. II. Indeed, according to rule 12 in book 6, "he who acts through another is as if he acts through himself"; therefore, it follows that only the godfather, designated by the parents, and not his procurator, contracts spiritual affinity. III. This also seems to be gathered from reason and from absurdity: from reason, because he who contracts marriage through a procurator truly contracts it; but from absurdity, because if the one giving the mandate were not the godfather, no godfather would be present, and since the procurator intends to perform the office of godfather not in his own name, but in the name of another. (1) IV. The opinion which holds that only the principal one giving the mandate contracts spiritual affinity, and not at all the procurator, is further strengthened by a resolution of the Sacred Congregation of the Holy Office, which admitted that a spiritual impediment to marriage could pre-

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exist between spouses, by which the marriage contracted was null. (1) The mind of the Church is that true godparents should be present, so that no spiritual affinity should be established between the godparents; which, if the one giving the mandate were not truly the godfather, would be absurd and contrary to the mind of the Church. NULLITY OF LEGATES, OR ABSOLUTION. June 11, 1881. Through summary petitions. COMPENDIUM OF THE CASE. Dominic and Anthony, brothers, having presented a supplication, requested the Sacred Congregation of the Holy Office to hear them, stating as follows: that their own father, having died, had, in a written document, intended to burden himself with a perpetual legacy of one Mass, with only his presence, for all festivals, in the parochial church.

[*Latin ed. p. 418*]

418 THE LEGATE OF NULLITY presents certain difficulties. It is alleged that the legate was left by his father, but the father lacked the capacity to make a will. Two witnesses to the document are already deceased. Furthermore, the completion of this legate, even if it were obligatory, is now impossible, both due to the scarcity of priests and the wealth of the aforementioned heirs. The parish priest also states that he would be willing to grant to anyone any right that might accrue to him from such a disposition. Therefore, the aforementioned petitioners request that the alleged legate be declared null and void, and that they be in every way relieved of its obligations. The matter is to be examined. THE PRAYERS OF THE PETITIONERS ARE TO BE REJECTED. For, according to canon law, in order that dispositions made for pious causes be supported by firm validity, it is required that there be three or two witnesses, by whose aid the will of the testator may be proven, as is clearly stated in chapter 11, title 2, *de testamento* – there – "We command that whenever a testament, or indeed any such disposition for pious causes, is brought before you for examination, it be examined not according to the civil laws, but according to the statutes of the Decretals, with three or two lawful witnesses required, and that it be established that the testator acted freely, with the capacity to make a will joined to his will." Given this established principle of law, and considering that two witnesses were present in this particular disposition, as is evident from the deceased's eulogy, which is signed by Father Erasmus of the Observance and by the Oeconomus Temperini, it cannot be argued that the validity of this disposition is undermined by the fact that the testator was not of sound mind. Indeed, this assertion is so far removed from the truth that it seems impossible to admit. Certainly, if John Baptist, the grandfather of the petitioners, did not truly possess the capacity to make a will, it cannot be presumed that two witnesses, one of whom held a priestly dignity, would have signed the document, and that the testator's own son would have undertaken an obligation for himself and for his heirs.

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However, even admitting this for the sake of argument,

[*Latin ed. p. 419*]

419. Although the testator may not have been of sound mind, it does not seem that the institution of a pious legacy can be rendered ineffective in any way, since John Mary, the testator's son and father of orators, ratified the paternal disposition and accepted it for himself and for his heirs. Moreover, there appears to be no valid reason to consider the obligation of such a son to be of little importance, since he himself was subject to the same condition. Indeed, it is established in law that a disposition made for pious causes is not subject to the prescriptions of civil law, but must be judged according to Canon Law; argument from chapter 11 concerning testaments and last wills. Therefore, there appears to be no compelling reason why a disposition made for pious causes, made by a person under interdiction, should not be maintained in full force. It is established that a legacy for Masses derives its force from the intention of the testator, and cannot be relaxed by grace; for this would not only destroy the testator's will, but would also harm the spiritual good of the faithful of that parish. THE PRAYERS OF THE ORATORS ARE TO BE RECEIVED. However, on the other hand, there appear to be certain reasons that suggest that a legacy for Masses should not be declared null and void. Indeed, according to Modestinus I. 1 ff., "Qui testamenta facere possint," it is a just opinion that a will is the expression of our will regarding what we wish to be done after our death, and therefore, only those who are capable of testating should be able to dispose of their affairs; as Reiffenstuel points out in Book 3, title 26, concerning testaments and last wills, § 10, numbers 282 and 283, "that a human act is valid, even according to natural law, if the person performing the act lacks the use of reason," argument from §. Also, the insane are not permitted to make a will, according to Institutes, Leg. 2. ff. "Qui testam facere," and there it is stated, "that in the person who is making a will, the soundness of mind, not the health of the body, is required." Given this established principle of law, it appears from the facts that the testator was not of sound mind at the time he imposed the obligation on his heirs to celebrate Masses on feast days, as stated by the orators.

[*Latin ed. p. 420*]

420 THE ORDINARY DECLARES THE LEGACY NULL. For he says: it appears that the testator was not of sound mind, since he did not actively participate in the act; but his son, subject to a legal impediment, and the administrator of his estate, undertook the obligation. Therefore, if it is admitted that the testator was not of sound mind when he instituted the legacy, it seems that such a legacy ought to be considered ineffective and without any force. However, it would seem improper to object to the validity of the pious legacy, arguing that the testator's son undertook the

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obligation arising from his father's disposition. For the act promised by the son should be considered either as a novation of the obligation, or as an accessory obligation. If it is the former, and it is evident from the facts that the son was bound by a legitimate impediment and therefore incapable of undertaking obligations, it seems that such a novation cannot have any effect. If it is the latter, and the recent impediment is considered, it should be noted that an accessory obligation, when added to the principal obligation, must follow the nature and character of the principal obligation itself. With regard to this, since it appears from the foregoing that the legacy of masses, made by John the Baptist, is invalid, it follows that the obligation undertaken by John's son must be declared to be without any validity, as stated in Leg. 2 ff. de Pecul. "For those things which have the place of accessories, are extinguished when the principal things are extinguished." This is in agreement with I. Nihil dolo 129 ff. de Reg. Iur. "When the principal cause does not exist, neither do those things which follow." Even if there is doubt about the existence of the legacy of masses, the petitioners could nevertheless be released from the bond of its satisfaction, by grace, if there is a just cause. Their extreme poverty is a just cause for exemption, as stated in Causa 16, quaest. 7, cap. 30: "Whenever any of the faithful, out of their own devotion, have contributed something from their resources to the Church, if they or their children should be reduced to poverty, they shall receive support from the same Church for the sustenance of their lives, for the time being."

[*Latin ed. p. 421*]

NULLITATIS LEGATI 4,21 After these and other matters had been noted, the question was raised as to how the prayers of the advocates should be addressed. RESOLUTION. The Sacred Congregation, on June 11, 1881, decided to respond: "It does not follow that the validity of the legates is established." GATHERINGS: I. It is most fitting for men that the act of testament should be made, as the reasoning in book I, chapter 10 of the work *De Sacra Ecclesia* demonstrates: "For nothing is more due to men than that the supreme will, after they can no longer will otherwise, may be permitted to have its own judgment." II. Hence, even though civil law has introduced a certain form of testament and a specific method, it is also clear from history that the act of testament originates from natural and civil law; for it is recorded that testaments have been made among various peoples before the establishment of civil laws. III. Moreover, natural law itself requires that, in order for a testament, as a human act, to be valid, the person making it must not lack the use of reason; hence, those who are mentally incapacitated, insane, or infants are prohibited by natural law itself from making testaments. IV. And civil law, recognizing this, adds in the laws: "In order for a testament to be valid, the integrity of the mind of the one making the testament, and the soundness of his faculties, are

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required," and in *adversa* 17 ff. of the same work: "He who, at the time of making the testament, is mentally incapacitated by a bodily ailment, cannot make a testament." V. Since it is alleged that the advocates lacked the use of reason when they constituted the legatum for the masses, it must be said that they have always acted in this manner, although in testaments, what is required by natural law is sufficient for pious causes.

[*Latin ed. p. 422*]

422 INSTITUTIONIS, June 1881. SUMMARY OF THE CASE. The Reverend Anthony Colleoni, on the 6th of October, in the year 1817, by his will, established a perpetual endowment of 100 Masses for the benefit of a chapel, to be celebrated in the oratory of Saint Julian, located in the town, commonly called Calusca, in the diocese of B., and he desired that, in addition to others, it should be held by his male descendants, or, if that line failed, by descendants from the female line, of which he wished the first to be the line of Mary, married to Zonca. Indeed, the cleric John Zonca, nephew of the aforementioned Mary, while studying theology at the Seminary of N., and being about to receive the sacred Orders, requested this chaplaincy from Colleoni, claiming that, according to the will of the testator himself, he had the right to it, since the male line had become extinct. For a long time, the Ordinary denied John Zonca this institution, because he lacked the order of the priesthood; however, after having received the priesthood, and the Bishop still refusing to grant the institution, he appealed to the Sacred Congregation, imploring that the institution denied by the Bishop be granted, and simultaneously promising that he would appoint another suitable priest to administer the spiritual affairs in his place, with a suitable compensation assigned to him. SYNOPTIC ACCOUNT OF THE RIGHTS OF PRESBYTER ZONCA. He asserted that the institution in the aforementioned chapel should be granted to him, because it arose from a family that had been honored, and possessed the right of patronage by passive inheritance. For the testator, having indicated that this right should be given to his male descendants, also wished that, if they were lacking,

[*Latin ed. p. 423*]

INSTITUTIONIS 423 would be granted to those who descended from three female lines, the first of which was called the line of Maria Zonca. Furthermore, it has been ascertained that the aforementioned Zonca, Mary, is a descendant of the family, since it is evident from certain documents that she is the granddaughter of the aforementioned individual; therefore, the establishment of such a chaplaincy for her seems to be something that cannot be doubted in any way. Consequently, the petitioner observes that the Bishop, by denying her this establishment, has not acted in accordance with the norms of the Council of Trent, which in Session 25, chapter 5, concerning the clergy, decrees that patrons or ordinaries cannot alter the

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law of foundation, as is stated in the Alexandrian Decanatus of 12 June 1598, before Orano. Moreover, the words of the testator in the aforementioned document are so clear and well-established, and the petitioner's right to obtain such a chaplaincy is so evident from the foundation documents, that neither the patron, nor the parish priest of Calusca, nor even the Bishop himself could deny it. Indeed, with regard to the patrons, the capitular vicar testifies: that no exception should be made, so that the aforementioned Zonca should be established in the benefice. And with regard to the parish priest of Calusca, the same capitular vicar reports: that from the parish priest's response and the documents existing in the curia, it clearly results that the aforementioned John Zonca truly possesses the passive right of patronage to said benefice. Therefore, it is established that the petitioner has the right to hold such a benefice, and it is also established that she is suitable to obtain it, and it seems to be placed beyond all doubt that the aforementioned establishment should be granted to her. Nor should this seem surprising to anyone, since, according to the writers on ecclesiastical matters, such a grant is called a necessary collation, as testified by Garzia in *de benef.*, part 7, chapter 15, number 1: "Indeed, there are some benefices which, by foundation, institution, statute, custom, or privilege, are due to certain persons or a certain class of persons, and these benefices must be conferred upon them and not upon others, as is well known, and therefore their collation is said to be necessary." Rebuf concurs in *praxi*, title on collation, number 1.

[*Latin ed. p. 424*]

424 INSTITUTIONIS et de quaest. 14 P. Gregor, de benef. c. 39 n. 3. Concordat Puteus decis. 100 n. 3 lib. 3 et decis. Abulensis Parochialis £4 Oct. 1574. Moreover, besides the testator's will, which is declared in the foundation documents, there are also particular reasons that seem to encourage the Sacred Congregation to accept the prayers presented by the petitioner, namely because he himself is poor and burdened with debts; and because there is a danger that Pemanium, that is, the aforementioned property, might be added to his, so that he may pursue his own affairs. Finally, because the Vicar capitular reports that the Parochus C. is highly esteemed and that, in fact, the aforementioned Zonca should be instituted and admitted to the possession of the vacant benefice. It would be wrongly objected to this institution that the petitioner, since he is required to reside in the diocese of N., is not in a condition to fulfill the duties imposed on the Beneficiate by the testator, namely, to offer a certain number of Masses and to assist the Parochus C. in the care of souls. This objection can be overcome by noting that it is within the power of the Bishop to recall the petitioner to his diocese, or, if that is not the case, that he is prepared to choose another priest who will fulfill these duties in his place. This can be admitted, both because it is known in law that he who acts through another

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is considered to act himself, according to Rule 72 of the Rules of Law, in 6; and because it does not seem to pertain to the matter of a residential benefice. A lesser objection might be that the petitioner is not in a suitable ecclesiastical condition, since it has been ascertained that the petitioner was already ordained as a priest by the Bishop of N. If, therefore, it is clearly evident from the testamentary documents and from particular reasons that Zonca has the right to acquire possession of this benefice, it seems that his prayers should spontaneously be accepted by the Sacred Congregation.

WHAT IS OPPOSED TO PRESBYTER ZONCA. However, on the other hand, the Bishop considered that the prayers presented by the petitioner should be rejected, because two difficulties are opposed to the petitioner's institution in the benefice: the first is that...

[*Latin ed. p. 425*]

Having been examined in the investigations which are customarily held before ordination, he was always rejected; namely, because he did not exhibit the qualities of his vocation. Hence, the Bishop added, he appears unworthy of ecclesiastical benefit, who has been judged unworthy, once and again, to be promoted to the priesthood. Another difficulty lies in this, that the benefice in question, besides certain Masses to be said, has an attached burden of assisting the parish priest of Calusca. From this, the Bishop said, it would follow either that I should accept him into my clergy, so that he might be able to fulfill the duties, or that I should grant him the benefice, although he would never be able to fulfill the duties. But first, I do not wish to act in opposition to the judgment of my venerated predecessor, which is justified by the information I have received; secondly, I would act according to the sacred canons, because it would be against the law to grant the benefice to one who cannot fulfill the obligations. Any remaining doubt is dispelled by article 20 of the will, which grants the Ordinary the power, in cases of doubt, to resolve the matter in the way that he deems best. Finally, the Bishop added: all difficulty on the part of the Demanio [the state] will be removed, when the orator [the advocate] ceases to make exceptions; then a rector can be chosen, who will receive the revenues, never the Demanio receiving what is due. With these considerations on both sides, the Most Reverend Fathers resolved the question: Whether the institution of the benefice should be granted to the priest, Anthony John Colleoni Zonca, in this case.

RESOLUTION. Having considered the matter, the Sacred Congregation [presumably the Congregation of Bishops] decided on June 18, 1881: Affirmative.

[*Latin ed. p. 426*]

426 FROM THE PRINCIPLES FROM WHICH THE FOLLOWING ARE DERIVED: I. The wills of testators must be observed entirely; all things

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proclaim this, when, with clear words, they exclude certain persons from succession in the patronage right. II. Those who enjoy the passive right, and are considered to be nominated by the founder himself, can resist any nomination, to the extent that they are neglected by the collators. III. Furthermore, the Council of Trent: in the collation of benefices, in no way must the qualities and certain obligations be removed which were required or established in the erection or foundation of those same benefices. IV. Since some benefices are to be conferred from their foundation upon certain persons, or a certain class of persons, therefore the collation of benefices is said to be necessary. V. From certain documents, it is clear that the petitioner descends in a direct line, passively called; hence, it can be denied that he could not have held such a chaplaincy, the obligations of which he could, even through another, fulfill.

(1) *École* Vol. IV, page 643 and 653, Vol. VIII, page 463.

FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS OF PARIS, OR THE CONGREGATION FOR THE MISSION, REGARDING VICARS AND APOSTOLIC PREFECTS. June 3, 1881.

SUMMARY OF FACTS. The Reverend Father, the Superior General of the Mission Congregation, reported to His Most Holy Father Leo XIII.

[*Latin ed. p. 427*]

PARIS. At the general chapter, held for the purpose of electing the Superior General, a difficulty arose concerning the Vicars and Prefects Apostolic, namely: whether these individuals, while the election of the Superior General is being held, should possess or not the right to vote passively. The general chapter, after careful examination, concluded that these venerable gentlemen, neither by the rules, nor by the constitutions, nor by the decrees of the general chapters, are deprived of the right to vote passively in this election. However, the same chapter could not overlook the fact that Vicars and Prefects Apostolic cannot be called to the chapter, nor can they attend it, unless they have received permission from the Most Reverend Prefect of the Sacred Congregation for the Propagation of the Faith; nor can they accept the office of Superior General, should one of them be chosen for it, without a dispensation from the Supreme Pontiff. In this case, it is clear to everyone that the election of the Superior General cannot be completed, or it will remain suspended. Therefore, no solution presented itself to the chapter to resolve this complex situation, except that the Vicars and Prefects Apostolic, with a willing and spontaneous heart, should renounce their passive vote in this instance. The Vicars and Prefects Apostolic also issued a similar renunciation concerning the election of the Assistant and Advisor to the Superior General. For these individuals, since they cannot abandon the office for which they have been appointed by the Apostolic See, without the dispensation of the same See, they ought to remain with the Superior General, by virtue of the nature of their office as Assistant or

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Advisor, and by the force of the decrees of the general chapters. Although, thanks to these renunciations, spontaneously issued, the present election did not remain suspended, nevertheless, in order to avoid any uncertainty for the future, the matter was submitted to the judgment of the Supreme Apostolic See. Synopsis of the Discussion. The Archbishop of Paris, consulted regarding the information and vote on this question, stated that he considered: 1. That Bishops from the Congregation for the Propagation of the Faith, who have been assigned to the governance of another diocese, should neither possess the right to vote passively nor actively.

[*Latin ed. p. 428*]

428. PARISIEN. In the election of the Superior General and other offices, since those [candidates] are already absolved from the bonds of the Congregation and perpetually bound to their See, it is necessary to consider this. 2. Apostolic Vicars, distinguished by the dignity of the episcopate, can possess an active voice, but not a passive voice, in the General Chapter. This would be in accordance with the practice hitherto in force and with the position they hold among the members of the Congregation; for they lead a common life with the missionaries, they are their superiors, and they also perform the office of visitor in their province. Therefore, they have always possessed an active voice, which does not seem to be denied to them. The same cannot be said of the passive voice, which is nowhere taken away from them in the constitutions and decrees. In fact, no Apostolic Vicar has ever been elected to the Generalate, and such an election would be contrary to the constitutions, which state that the Superior General cannot accept ecclesiastical dignities without the consent of the General Chapter, unless the Supreme Pontiff commands it in virtue of holy obedience. This is prescribed in § 9 of the Bull *Ex iniuncto*, already frequently praised. 3. Apostolic Prefects, who are not distinguished by the dignity of the episcopate, should be considered eligible for the office of Superior General. For nothing prevents this in the constitutions and decrees of the Congregation for the Propagation of the Faith, and it is of great importance that the number of those eligible should not be unduly restricted. "If I am not mistaken," says the Prelate, "the same reasoning does not apply to the office of Assistant and Monitor to the Superior General and other offices of the Congregation. Therefore, in my opinion, it should be permitted to grant only an active voice, and not a passive voice, in such elections." The Prefect of the Sacred Congregation for the Propagation of the Faith, when asked for his opinion, considered that the passive voice could not be reconciled with the office of General of the Order for Apostolic Vicars who exercise the jurisdiction of a diocese in a particular territory. As for the active voice, he considered that the custom should be kept in mind, according to which "they have a voice

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in the Congregation."

[*Latin ed. p. 429*]

PARIS. 429. Etiam Vicarii Apostolici sunt vocati ad electionem Superioris Generalis. Consultor suae Prolaturae distinguet ius constitutum et ius constituendum. Ius constitutum in hac re consistit ex regulis canonicis, constitutionibus Congregationis, et legitima consuetudine. Et dum Episcopi huius ordinis, secundum huiusmodi normas, ad gubernationem Dioecesis sunt assumpti, in eius conventibus amplius vocem non habent, quia extra familiam regularem sunt constituti; Vicarii vero et Praefecti Apostolici, sive dignitate episcopali decorati, sive non, in Capitulo vocem activam habent, quia ita sunt. Sede in partibus ecclesiastici regiminis destinati, ita tamen manent in gremio Congregationis. Quaestio itaque redigitur ad vocem passivam quoad munus residentiale Superioris Generalis, assistentis et admonitoris. Nulla enim praesens est prohibitio ut eligantur ad haec munera Vicarii et Praefecti Apostolici. Imo, profert generalis capitulum decretum, per Constitutionem Clementis XI confirmatum, quo quicumque sacerdotes Missionis, qui duodecim annos, post emissa vota, in Congregatione transiverunt, ad generalatum ceteraque officia libere eligi valeant. Cum vero tam in constitutionibus, quam in ipso decreto, exceptio fiat – dummodo quis nullo canonico impedimento irretiatur – videndum est, ait Consultor, an quoad vocem passivam ad praefata officia canonicum impedimentum sit munus praefecti seu vicarii Apostolici. Praeterea, Congregationis Epistolarum et Regularium, sub die 19 Augusti 1795, editum est generale decretum, ne in quocumque instituto regulari eidem personae duo munia incompatibilia conferantur, ita ut muneris posterioris collatio sit nulla. Quod vero munus Superioris Generalis, assistentis et admonitoris Congregationis Missionis, cum munere Vicarii seu Praefecti Apostolici incompatibile sit, patet, aliis omissis, ex quo Generalis Superior, assistens et admonitor Parisiis in domo S. Lazari, Vicarius vero, et Praefectus Apostolicus in assignato territorio residere debeant. Neque eorum eligibilitas sustineri videtur, ex quo si quis ex eis eligatur...

[*Latin ed. p. 430*]

430. PARISIEN. It is to be considered whether, should it be possible, this [practice] could be approved by the Holy See in general, concerning the dismissal of Vicars or Prefects Apostolic. For this election would be conditioned, contrary to the established rite and custom; and the election of the Superior General would remain suspended until an Apostolic response was obtained; therefore, the Chapter itself would be suspended, contrary to the statutes, and this would not be without a serious disturbance of the order. Moreover, according to the law establishing this, it would be desirable that Prefects Apostolic, who are not invested with the Episcopal dignity, might be eligible for the office of Superior General, so that the number of

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those eligible for the supreme governance of the Congregation would not be unduly diminished. Therefore, it would be necessary to consult with the Most Holy Father regarding such a concession and declaration, namely, that the Congregation of Missions might freely and immediately elect and proclaim any Prefect Apostolic, not an Episcopate, who has been elected by a majority of votes. However, it is not my place to give this counsel, said the Consultor, but rather it belongs to the Sacred Congregation, to which the matter has been entrusted by the Most Blessed Father. With these things noted, the proposed question was presented through two subsequent doubts:

I. Do Vicars Apostolic, who are invested with the Episcopal order, have the right to both active and passive votes in the Congregation of Missions for the election of the Superior General, his Assistant, and his Monitor?

II. Do Vicars and Prefects Apostolic, who are not invested with the Episcopal order, have the right to both active and passive votes in the aforementioned offices in the Congregation of Missions?

RESOLUTION. The Sacred Congregation of Bishops and Regulars, after discussion on June 3, 1881, decided that the following should be answered:

To I. Negatively regarding the passive vote, affirmatively regarding the active vote, but exercised personally.

To II. As in the first, during their term of office, regarding...

[*Latin ed. p. 431*]

PARISIAN. From ARTICLES 431: I. Apostolic Vicars, distinguished by the episcopal order, cannot be chosen for the General Congregation of the Mission, nor for the position of assistant and advisor to the Superior General of the same. II. Indeed, such duties, omitting others, cannot at all be combined with the office of Apostolic Vicars; for while these must reside in the territory assigned to them, the General, his assistant, and his advisor are obliged to live in Paris. III. Nevertheless, the same Apostolic Vicars, who are Bishops, have the right to an active vote in the aforementioned elections, provided they personally cast their vote, and certainly not through others or a proxy. IV. Apostolic Vicars and Prefects who lack the episcopal order are deprived of the right to a passive vote only as long as they remain in this capacity; thus, if this ceases, they can be chosen again for the offices of General, assistant, and advisor. V. Apostolic Vicars who are Bishops are never restored to the right of a passive vote with regard to the aforementioned offices, because the Constitutions of the Mission prescribe that the Superior General cannot hold ecclesiastical dignities unless it is ordered by the Roman Pontiff, in virtue of holy obedience. FROM S. DECREE REGARDING MATRIMONIAL DISPENSATIONS, held on the fourth day of February, 1882, in the General Congregation of the Holy Roman Church and the Universal Inquisition, before the Most Eminent and

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Most Reverend Cardinals of the Holy Roman Church, Inquisitors General, regarding the following question: Whether, concerning the value of dispensations, whether those granted either directly by the Apostolic See, or by the Pontiff...

[*Latin ed. p. 432*]

432. To the Tifernian Delegation, it is permitted to grant dispensations concerning any degrees of prohibited consanguinity, affinity, spiritual or legal relationship, and also concerning matters of public decency where it is necessary to express an incestuous union, whether contracted before the petition or execution of the aforementioned dispensations, and also to express the intention with which the union was entered into in order to obtain a dispensation more easily. The same Eminent and Reverend Lords, after the vote of the Reverend Consultors, decreed: Adherence must be given to the Decrees of the Sacred Office of August 8, 1866, and of the Sacred Penitentiary of July 20, 1869, namely: I. On the fourth day of the week, August 8, 1866, the Eminent Fathers decreed that dispensations are null and void, and have no validity whatsoever, which, whether granted directly by the Apostolic See, or by a Pontifical Delegation concerning any degrees of prohibited consanguinity, affinity, spiritual or legal relationship, and also concerning matters of public decency, if the spouses have committed the sin of incest before the execution of such dispensations, or before or after their petition, and whether questioned or not questioned, maliciously, or even unknowingly, have concealed an incestuous union between them, whether it be publicly known or hidden, and have concealed the intention with which they entered into that union, in order to obtain a dispensation more easily, are null and void. It suffices that one of the spouses has confessed this fault, or the aforementioned intention in any way. This, indeed, is not only commonly taught by approved authors, but is also confirmed by the Most Holy Pope Benedict XIV in the Constitution which begins "Pastor bonus," II. The Sacred Penitentiary, under the date of July 20, 1869, responded: After the Constitution of Pope Benedict XIV, "Pastor bonus," it can no longer be doubted that a dispensation obtained through the concealment of an incestuous union, or through a perverse intention of obtaining a dispensation more easily, is null and void, having been obtained in that manner.

[*Latin ed. p. 433*]

433 LETTER to Archbishops and Bishops, and other ordinaries of places in the region of Sicily. LEO XIII, POPE. "VENERABLE BROTHERS AND BELOVED SONS, GREETINGS AND APOSTOLIC BENEDICTION. As many things have been boldly and insidiously undertaken by those who for a long time have been thinking of the ruin of the Catholic name, so it seems that they have specifically decided to stir up a certain popular

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hatred against the Supreme Pontiffs. And indeed, this scheme of theirs is becoming more and more evident and is breaking forth daily. They eagerly seize every opportunity to slander the Pontiffs, not seeking it out diligently, but rather seizing what is offered; they disregard the monuments of past events, and spread fabricated accounts; they hurl false accusations, like poisoned arrows, with such unbridled license, the greater the impunity. In this habit of speaking ill, there is something else intended, besides insult: namely, these wicked men aim to direct the insult from the person of the Roman Pontiffs to the very office of the Pontificate, divinely instituted; and, by bringing the highest princes of the Church into contempt, they seek, if possible, to condemn the Church itself in the opinion and judgment of men. – A sad document of these machinations you, Venerable Brothers and Beloved Sons, saw last month in Palermo. And your indignation could not remain silent; you carefully conveyed to Us, through letters full of duty, the clear and noble meaning of what happened, as befits Bishops. Indeed, those injuries were beyond measure grievous, as those who had gathered in Palermo by arrangement were seen to have convened in order to compete in hurling insults at the Roman Pontiffs. There was not even a semblance of religious decency, which the Sicilian people have piously and inviolably preserved from their ancestors, and which was cruelly insulted, in words that no honest man could bear with a calm spirit. Let each of you conjecture the pain that these things have caused in Our heart. For nothing is more lamentable than to see the majesty and sanctity of the Church publicly insulted."

[*Latin ed. p. 434*]

434. A nefarious act of contempt; nothing is more deplorable than the unworthy violation of the memory of the Supreme Pontiffs by Italian men. The things which the Roman Pontiffs have done for the salvation of Italy are confirmed by the testimony and judgment of the whole world, so that there is nothing which we should fear from just and prudent men concerning the actions of our Predecessors. However, We are greatly disturbed by the accusations, of which We are speaking, first by the inherent injustice of the matter itself; then by the danger of the uneducated multitude, which can more easily be deceived and led into error. And indeed, a great error will result if, when judging this matter, consideration is not given to the circumstances and customs of that time. It is necessary to examine the institutions and laws of that time, and above all, to recall the law of nations by which they lived. It has been shown that, in those times, the authority of the Roman Pontiffs was very powerful in civil matters as well, and that this was not only not contrary to, but also with the consent, approval, and good-will of princes and peoples. And when the patronage of the Vicar of Jesus Christ seemed desirable, it often happened, especially in Italy, that cities would flee to Him as to a public father, and would spontaneously surrender

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themselves to Him in faith and entrust themselves to Him. The Apostolic See was held in such high regard as a bulwark of justice and a protector of the weak against the injuries of the powerful. And this was indeed to the great benefit of the common good: for it was through the authority of the Pontiffs that controversies were often resolved, disturbances were quelled, discord was removed, and wars were brought to an end. - However, in this magistracy over the people, and almost a dictatorship, no one can justly accuse the Roman Pontiffs of having sought to increase their own power or wealth, or to extend their territories. They always directed all their power towards benefiting the states, and it was through their efforts and under their auspices that Italy often achieved the repelling of foreign enemies, or the suppression of the turbulence and ambition of domestic adversaries. In this matter, Venerable Brothers and Beloved Sons, you have rightly recalled Gregory VII, Alexander III, Innocent III, Gregory IX, and Innocent IV, our Predecessors, who, with great prudence and fortitude, prevented the domination of foreign nations, which often threatened Italian affairs. As for your Sicily, it has responded with faith and piety to the paternal benevolence of the Pontiffs towards this Apostolic See. Truly, their counsel and vigilance...

[*Latin ed. p. 435*]

LETTER 435: The people of Sicily ought to have done all that they could to escape the Saracen servitude. And they also obtained, with gratitude and justice, freedom from Innocent IV and Alexander IV; for, after the death of Emperor Conrad, it was decided that the supreme power should reside with the municipality. Later, when Clement IV solemnly proclaimed Charles of Angers as King of Sicily, there was no fault to be found. He acted according to his right, he did what he judged to be best for the Republic of Sicily, bestowing the insignia of power upon a noble and powerful man, who seemed capable of ordering civic affairs and resisting foreign ambition; and, indeed, even the most exemplary domestic examples suggested that he would rule justly and wisely. Therefore, it is not right to ascribe blame to either Urban IV or Clement IV for the fact that a man of foreign nationality assumed the kingship of Sicily. For, besides the fact that history has not lacked, nor will it lack, examples of this kind, the Sicilians themselves, in that very year, willingly submitted to the power of a foreign prince. However, as soon as Charles turned to a more unjust form of domination, driven primarily by the wickedness of his ministers and plunging the Republic into a disastrous state, the charity of the Roman Pontiffs in warning him, and the severity in correcting him, were certainly not lacking. It is well known that Clement IV and Nicholas III exerted every effort to bring that man back to justice and equity. Perhaps their efforts would have overcome the obstinacy of the prince, had not the sudden fury of the populace unexpectedly opened a path to new events. After that inhuman slaughter, of

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which, once the frenzy subsided, even its perpetrators were ashamed, Martin IV, spurred by a sense of duty, dealt somewhat more severely with the Sicilians, and also with Peter of Aragon, according to their merits. Nevertheless, Martin and Honorius IV, Nicholas IV, and Boniface VIII mitigated that severity with gentleness and mercy; and they did not rest until, after all disputes had been settled through letters and legations, they had, as far as possible, promoted the well-being and legitimate freedom of the Sicilians. From these things, it is clear that you, Venerable Brothers and beloved Sons, have spoken truly when you say that the Roman Pontiffs could not have been justly called supporters of unjust domination or instigators of popular hatred, unless through the greatest injustice. In this matter, Our predecessors used more just judgment towards those very Sicilian people, who, still grieving from the recent massacre, sought to appease the Apostolic See with bitter complaints. We have wished to recall these things, so that We may publicly express Our grief over the many and grievous injuries that have been inflicted upon the Church and the Roman Pontificate.

[*Latin ed. p. 436*]

436 WE attest by this letter: and at the same time, so that you may understand, that We have received with great pleasure your common letters, in which you lament, with the utmost concord of sentiments, the same injuries. The traces of episcopal virtue are evident in those letters, by whose grace perhaps posterity will be more lenient towards the temerity of those who have not hesitated to wound, with sacrilegious words, the Roman Pontificate, that is, the most noble and greatest ornament of Italy. Furthermore, from this very fact, you perceive more and more clearly what We warned you of last February, namely, how much vigilance is necessary to preserve the Catholic faith among the Italians in these times of such injustice. Therefore, Venerable Brothers and beloved Sons, continue bravely to defend the rights of the Church, to refute the lies of the wicked, to expose deceptions, and to retain all within the faith and love of this Apostolic See, from which, through the grace of the Apostles, the light of Christian wisdom has shone upon them. We, Venerable Brothers and beloved Sons, give you our paternal Apostolic Blessing, as a pledge of the divine benefits and as a testament to Our most sincere benevolence, and We commend you and your people to the care and faith of God. Given at Rome, near St. Peter, on the twenty-second day of April, in the year 1882, in the fifth year of Our Pontificate. LEO XIII, POPE. FROM THE HOLY CONGREGATION OF THE COUNCIL, FUNERALS, AND MORTUARY RITES. SUMMARY OF FACTS. Year 1879. The parish priest of St. Victor in the city of Milan reported, having presented a written petition: that for several years, religious of St. John of God have opened a private house within his parish, which they call a "sanatorium," under the name of St. Joseph. This house,

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closed to the poor, receives only wealthy sick people who are able to pay.

[*Latin ed. p. 437*]

FUNERALS AND REVENUES 437: They may collect three, five, and ten *denarii* daily. The advocate argued that this house appeared to have nothing in common with other houses of the same Order, in which the sick of all conditions and religions are received, provided they are poor; who are entirely provided with remedies for both body and soul. The directors of this house, the advocate continued, seek the power to open a public chapel against the parish church, so that they may enjoy the revenues, and thus usurp the rights of the parish. Therefore, the advocate inquired whether the privileges granted by Pope Pius V and by Gregory XIII to the religious of St. John of God could extend to this new house; and whether the revenues from funerals belong to the religious, or to the parish priest, within whose jurisdiction they reside.

SYNOPTIC DISCUSSION: RIGHTS OF THE RELIGIOUS. The advocate for the hospital house of St. Joseph argued that such a house of St. Joseph is exempt from the jurisdiction of the parish priest, so that it belongs to them to have the right not only to celebrate the funerals of those who die in said house, but also to receive the entire revenues from funerals. To achieve this effectively, he divides his argument into two parts. In the first part, he establishes the exemptions and privileges that the religious of this house of St. Joseph claim, and that are based on papal bulls or constitutions. In the second part, he addresses certain objections raised against him.

First, addressing the first point, he argues that it cannot be doubted that the religious of St. John of God residing in the hospital house of St. Joseph have the right not only to perform funerals in the public church of their own hospital, but also to receive the revenues from those funerals, since this is established by the constitutions of several Roman Pontiffs. Indeed, His Holiness Pope Pius V, in the Brief *Salvatoris Nostri* for the hospital erected in Granada in Hispania, in § 9, decreed as follows: "Nor shall the hospital, nor the church, altars, and chapels of said hospital, be subject in any way to the said and any parochial rights or dues..."

[*Latin ed. p. 438*]

438 CONCERNING FUNERALS AND REVENUES: "We perpetually and entirely exempt [the hospital] from the jurisdiction and authority of other churches, and of their pastors and beneficiaries, with regard to the collection of ecclesiastical dues, offerings, and other rights and revenues, including those derived from funerals, which accrue to the hospital and will accrue in the future." The reason for this disposition, as assigned by the same Pontiff, is twofold. Firstly, because the parish priests do nothing in the hospital, since the hospital has its own administrator for the administration of the sacraments; secondly, because revenues of this

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kind should be used for the support and growth of the hospitals. These privileges and exemptions granted to the hospital of Granada by Gregory XIII through the Bull *In super eminenti*, on April 28, 1576, were extended to all hospitals of the Order of St. John of God, as is evident from § 14 of that same Bull. Furthermore, he states that Sixtus V, in order to strengthen these rights, privileges, and exemptions, issued two Constitutions on June 10, 1585, and that Pope Pius V, as well as the Bull of Gregory XIII, completely confirmed them. He adds that Gregory XIV granted to all hospitals of St. John, both in Italy and outside of Italy, the same privileges, immunities, and exemptions that were granted to the Archihospital of the Holy Spirit in this city. Moreover, the privileges and immunities granted to the Archihospital of the Holy Spirit by Sixtus IV consisted in this: that the superiors and administrators of the same were not only not obliged to pay the parochial tax, but were also exempt from the obligation of paying *gabelles*, taxes, and other burdens. He insists that Clement VIII acted in the same manner, who, in accordance with the Constitution of September 9, 1596, restored the Order of St. John of God, which had been suppressed at the request of certain individuals, and furthermore, in § 2 of the aforementioned Constitution, established that all hospitals belonging to this Order, and their administrators, should enjoy privileges, exemptions, and prerogatives.

[*Latin ed. p. 439*]

FUNERALS AND ENDOWMENTS 439, that they might perpetually enjoy the benefits granted to them by their predecessors. And he asserted that this was justly so, for, as the learned Cardinal De Luca wisely observes in *Discourses*, XXIII, § V, concerning Parishes: "These hospitals are exempt from the jurisdiction of the Parishes, because he who, from the same order, or otherwise, is considered worthy to administer the sacraments to the sick, is held in the place of a parish priest, and the hospital itself is said to be within his jurisdiction, having a separate territory, and those who live there constitute a certain kind of distinct parish, standing by itself; therefore, it spontaneously follows that the Rectors of such hospitals ought to have the right not only to perform funerals in their own church, as any parish priest usually does, but also to have all endowments granted to them." From this, the advocate urged that whenever such rights and privileges pertaining to the aforementioned Religious of St. John have been brought into question, they have invariably been recognized and confirmed, not only by the Sacred Tribunals, but also by the Roman Pontiffs themselves; which the defender confirmed with numerous other examples. Following this established law, and since the fact consists of this, that the hospital of St. Joseph is a monastery and a hospital belonging to the Congregation of St. John of God, it spontaneously follows that the same privileges and rights, and the same faculties and exemptions, which are proper to all other hospi-

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tals, ought to be extended and granted to this hospital as well. Furthermore, the fact that the hospital of St. Joseph is to be considered a religious house, and that it is established according to the form of other houses of the same Order, is demonstrated by the facts that preceded or accompanied this establishment. Indeed, it has been shown that this house was acquired and expanded, not only through the alms of the Christian faithful, but also through the funds of the Religious themselves, and even through funds drawn from the *capsa* of the entire province, with the authorization of the superiors of the Religious Order. It has also been shown that the house was built, not only with the consent and approval of the Major Chapter of the Congregation, but also with the Apostolic Brief.

[*Latin ed. p. 440*]

440. The cemetery and related benefits, not only belonging to the venerable hospital of St. John of God, but also subject to the Provincial Fathers and Priors, by order of the Superior General. Furthermore, the Advocate argues that this house is clearly a religious institution, as evidenced by the disciplinary regulations, by the order of the Provincial Father to the men residing in the hospital of St. Joseph. And this is not enough: he maintains that the religious character of such a house is evident from the purpose for which the confreres intended to establish it, namely, to have a house in which, independently of any secular authority, they could live according to the rules of their own Order, and to establish a new monastery in which those who had taken the habit of St. John of God could be received, so that the Religious Order would not gradually and imperceptibly disappear. Finally, he argues that the aforementioned house should be considered a religious institution because the Roman Superior General had it in mind to establish a religious house, and he used that very name for it. Therefore, the Advocate concludes, in matters concerning a monastery and religious persons, who are members of the Order of St. John of God, all rights and privileges, and the exemption from the jurisdiction of the parish priest, which the Roman Pontiffs have granted to such religious families, wherever they are established or to be established, must necessarily be granted to them; therefore, the right to perform funerals in their own church, as well as to receive the related benefits, must be granted to them.

(1) (1) After omitting other decisions and authorities, it seemed appropriate to mention the opinion of the Cardinal Vicar Tribunal, dated February 2, 1879. After the death of the Bishop of Versailles in the hospital of St. John, and after the funeral services were performed in the church of that hospital, a dispute arose regarding the benefits of the funeral. The parish priest claimed that they belonged to him, citing the Roman Clergy Statute, which under § 12 states: "The right to perform funerals is granted to the parish priest, even for those who die in any privileged hospital." On the other hand, the Superior of the same hospital denied this, citing the rights

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and privileges granted to his Order by the Supreme Pontiffs. The matter was resolved amicably, with the Cardinal Vicar, after a thorough examination and a favorable opinion from two canonists, and after considering the arguments of both parties, issuing a judgment in favor of the religious of St. John.

[*Latin ed. p. 441*]

FUNERALS AND ENDOWMENTS 441. After these things, the eloquent speaker, moving on to the second part of his argument, stated that his opponents were laboring in vain, arguing not about the monastery and hospital of the Brothers of Saint John of God, but about a *privata* house, which certain pious men had established, relying on a statute whereby the sick are obligated to pay daily either three, five, or ten *libellae*, in order to be received into the hospital. He responds that such an objection has already been thoroughly refuted above, where, with numerous arguments, it was demonstrated that the hospital of Saint Joseph is truly a religious house, and that those who live there, under the rules of Saint John of God, are truly religious. Furthermore, he adds with horror that, in the aforementioned house, only those who pay three, five, and ten *libellae* daily are received. Whereas, it is proven by irrefutable documents that, although a payment of three *libellae* for each sick person is established, some of the sick pay two and a half *libellae*, some pay two, some pay only one *libella*, or even less, and some are received and cared for entirely free of charge. He contends that this payment of three *libellae* was established by the Religious, after consultation with the Archbishop, so that the hospital house, as we mentioned above, might be under the protection and oversight of the secular commission, commonly called the *Congregazione di Carita*. And since this is so, he adds, it is surprising that not only the ancient hospitals of Saint John, but also those recently founded, which are in the same condition as the house of Saint Joseph, or even in a worse condition, enjoy the same privileges, exemptions, and rights concerning funerals and the collection of endowments. Indeed, the speaker, adhering to the dispositions of the Prior and the General, declared that the hospitals, both in Padua and in Brixiae, although established in the same manner as the house of Saint Joseph, nevertheless enjoy privileges and exemptions. Therefore, if the rights of the Religious of Saint John have been recognized, despite the clause inserted in the statutes of the Roman clergy, it seems even more strongly to be maintained in this case, since the parish priest of Saint Victor is unable to bring any privilege to his own advantage.

[*Latin ed. p. 442*]

442. [The Religious of St. Joseph] enjoy all the rights and privileges which are granted to the Religious of St. Joseph. To the examples given up to this point, the advocate adds the example of the hospital house in

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Paris, which, although it is truly a house of health, or *maison de santé*, and receives only wealthy sick people who pay fees of five, ten, or even fifteen [daily]; nevertheless, they enjoy the right to perform funerals and to receive the emoluments thereof, not for any other reason, but because this house belongs to the Congregation of St. John of God. Therefore, since it is clear from the facts that the hospital of St. Joseph, located within the confines of Saint-Victor, is truly a religious house, and that the Religious of St. Joseph, belonging to the Congregation of St. John of God, are truly Religious, and that these Religious of St. Joseph, under the authority of the General Chapter of the entire Order and of other Superiors, govern and administer this house, the advocate concludes that the hospital of St. Joseph should be granted such privileges, rights, and exemptions.

(1) Having stated these things in favor of the Religious, since the other party has presented nothing in their defense, the purpose is to clarify the following question: Whether the hospital of St. Joseph is exempt from the jurisdiction of the parish, so that the parish priest has no right whatsoever to the emoluments of the funerals of those who die in that house.

RESOLUTION. The Sacred Congregation of Councils, after repeated deliberation, on June 11, 1881, decided that the following should be answered: Affirmative in all respects.

(1) See the report from Bologna, dated May 4, 1881, page 346, and note that the funeral emoluments belong to the parish priest of the domicile of each deceased person in the hospital; but not to the parish priest alone, within whose parish boundaries the hospital of St. Joseph is located, so that this house cannot enjoy the privileges and exemptions granted to the Religious Order of St. John of God.

[*Latin ed. p. 443*]

FUNERALS AND REVENUES: From which [sources] Parishes are exempt, by the jurisdiction of the Parishes, and all rights and privileges have been granted to Religious Orders by the Supreme Pontiffs, so that they may be communicated to all families of the same Order, duly established and to be established.

ORDINATION OR EXCARDINATION: On July 9, 1881. A SUMMARY OF THE FACTS. Peter, of the diocese of V., refusing to be received for a longer time in the Seminary by the Archbishop, left his own diocese, and first migrated to the diocese of Bugellensis, and then to the diocese of Savonensis; where, for three years now, he has studied theology in the noble college of priests of the Mission, in which he also fulfills the office of prefect. Just as, while living in the diocese of Bugellensis, so also from the time he resides in the college of Savonensis, he has repeatedly requested letters of recommendation from the Archbishop, so that he might be ordained by the Bishop of Savonensis; but in vain. For the Archbishop, constantly denied the requested letters of recommendation. Therefore, the cleric Peter S. C.

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approached the Congregation, requesting that he might be promoted to the sacred orders by the Bishop of Savonensis. The Archbishop, having been consulted for information and his opinion on this matter, responded: that, on account of the dullness of his intellect, and on account of his not laudable conduct, and also on account of the lack of vocation, he could not accede to the petitioner's request.

[*Latin ed. p. 444*]

444. ORDINATION OR ECCLESIASTICAL TRANSFER. Therefore, the Bishop of Savona was requested to report on the morals, studies, and vocation of the cleric; who, in response, reported to the Sacred Congregation: that the aforementioned cleric was endowed with good morals and a gentle disposition; that he showed himself obedient, and that he was clearly pious, and devoted to his studies in theology for two years, having made such progress that he deserved to be praised by his teachers. Under these circumstances, the cleric again petitioned the Sacred Congregation to grant him incardination in the Diocese of Savona, so that the Archbishop might issue testimonial letters.

A SYNOPTIC DISCUSSION: PETITIONS OF CLERICS SHOULD BE REJECTED. It is clear from the Decree of the Council of Trent, Session 23, Chapter 8, concerning reform, that anyone must be ordained by his own Bishop. If anyone seeks to be ordained by another, he must present testimonial letters from the Bishop, commending his morals and suitability, according to the aforementioned Council of Trent. Therefore, if the Bishop judges that such testimonial letters should not be granted, his judgment must be followed, and it should not be easily permitted for anyone to be promoted against the will of his own Bishop. Hence, Barbosa, in his *Tractatus de Episc.*, part 2, section 4, number 66, teaches that the Bishop alone has the authority to judge the suitability of a cleric for receiving the sacred orders. This doctrine, as is evident from the documents of Lucana, dated July 5, 1749, and Asculana, proposed on March 24, 1792, and resolved on April 2 of the following year, has often been followed by the Sacred Congregation. And although, at times, the Holy See has granted permission for someone to be ordained by someone other than his own Bishop, or to grant ecclesiastical transfer, even when the Bishop was reluctant, such permission has never been granted when the Bishop had reasonable objections. No one will doubt the reasons that the Archbishop presented.

[*Latin ed. p. 445*]

ORDINATION OR ECCLESIASTICAL REMOVAL: It has been of grave importance to deny testimonial letters. To this, the Prelate added: it seems to him that it is not advisable to favor the case of a cleric rejected by his own Ordinary; and that the case of the cleric Peter is to be entirely rejected, as it is entirely unworthy. Therefore, since it is the duty of the Ordinary to render

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judgment regarding the admission to the Orders, and since the judgment of the Ordinary of origin is contrary to the prayers of the petitioner, it seems that not only is the admission to the Orders in the aforementioned diocese to be denied, but also that the cleric may not be able to be incardinated in the same diocese. THE PETITIONS OF THE CLERIC ARE TO BE CONSIDERED. On the other hand, it must be considered that, although, when it is a question of promotions to the Orders, the information and vote of the proper Bishop are important, and no appeal is given from the judgment of the Bishop; nevertheless, recourse is always available to the Holy See. Which, according to the laws of prudence and the various circumstances of the case, may either order the proper Bishop to promote the cleric to the Orders, or may grant letters of dismissal; or, by the fullness of power, may grant the cleric the faculty to receive the Orders either from the Metropolitan, or from a neighboring Bishop, or from any other Catholic Bishop; or finally, if the Bishop is reluctant, the Supreme Pontiff may grant the ecclesiastical removal, allowing the cleric to be transferred from one diocese to another. It is clear from various resolutions of the Sacred Congregation, especially from the Decree of Irregularity due to lack of knowledge of the Most Holy Sepulchre of Burgos, of February 23, 1875. (1) Indeed, the case concerned a Deacon, who, having been declared irregular by his own Bishop due to lack of knowledge, had fled to the Bishop of Sarsina, requesting that he receive him in his diocese. The Bishop of Sarsina agreed, but the Bishop of Burgos refused, and therefore refused to give the Deacon the letters, which are called "excardination" letters. The matter was brought before the Sacred Congregation, and the Most Eminent Fathers judged that it was proper for the Bishop of Burgos to dismiss the Deacon from his diocese, in order that he might be incardinated in the diocese of Sarsina, but in... (1) See this question in Volume VIII, page 689.

[*Latin ed. p. 446*]

446 Before ordination or excommunication, one must swear an oath to ensure that, afterward, he would not return to the jurisdiction of his diocese, nor intend to establish residence there. The matter was presented to the Congregation. Order of proceedings: Ordination of Aprutina, March 23, 1878 (1); Ordination of April 26, 1879. It seems that the matter concerning the Orator should be readily approved; firstly, because the Bishop of Savona is prepared to receive him within his own diocese and to promote him to the sacred orders, if the Sacred Congregation of the Council so decides; and secondly, because there are numerous testimonies from most distinguished men, which do not allow one to doubt the Orator's life, honesty, good morals, and progress in his studies. These are the Bishop of the diocese of Biella, Francis Martinengo; the priest of the Mission, Francis Giacello, Superior of the College of Savona; and himself from the Congregation of the Mission, the Superior of the same College, and finally, the

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Rector of the Episcopal Seminary of Savona. Having briefly noted these points on both sides, the matter was referred to the Fathers. RESOLUTION. The Sacred Congregation, after deliberation, on July 9, 1881, decided to respond: For the granting of permission to establish residence in the diocese of Savona, through a declaration under oath of the intention to remain there, it is permissible for the Orator to be promoted to the sacred orders at the discretion and conscience of the Bishop. (2) (1) This question is addressed in Vol. XI, page 30. If desired, see Vol. X, pages 474 and 485. (2) From what was stated by the Council of Trent, Session 22, chapter 16, concerning this matter: "Since no one should be ordained who, in the judgment of his Bishop, is not useful or necessary to his churches..." it is understood that it is left to the Bishop's discretion to grant or refuse sacred orders to his subjects, and that there is no appeal to the Holy See. It is certain that there is no appeal from the denial of sacred orders; but it has been repeatedly resolved by the Sacred Congregation of the Council, and it is especially evident from the decree of the same Sacred Congregation of April 21, 1668, concerning doubts proposed by the Archbishop of Rheims, that an appeal to the Apostolic See is possible. Furthermore, it is constantly repeated that appeals from the denial of sacred orders come to Rome and are received. For if the Council of Trent left it to the discretion of the Bishops to confer, or deny, orders to their subjects, this must be understood as a discretion governed by reason; that is, that sacred orders should not be denied without a just cause. On this matter, Cardinal Peter states in Tom. 1, ad Constitutiones unie. Urbani II, Section 1, n. 39: "It is possible to grant an appeal outside the judicial process to the Sacred Congregation..."

[*Latin ed. p. 447*]

ORDINATION OR EXCARDINATION: The Bishop states the reason for which he denies the orders. For the decision of the Bishops must be regulated by law. This is the difference between a true reason and a simple whim: the former must be regulated, if not strictly, at least in some way, by law; while the latter loosens the bonds, but does not break them; the second, on the other hand, has no rule at all. However, there must be a true reason, and the denial must be reasonable, so that room is made for compelling the Bishop to confer the orders, since a mere reason is not sufficient. From the time of Gregory XIII, the causes for appeals are sometimes referred to the Metropolitan or the nearest Bishop, and sometimes they are settled in Rome. If the appeal is referred to the Metropolitan or the nearest Bishop, they investigate the reasons why the Discretionary Bishop rejected the petitioner; and if these reasons do not conform to justice, they promote him to the holy orders, after he has petitioned once, twice, and a third time with his Bishop. If they are settled in Rome, the Secretary of the Holy Congregation writes to the Bishop who is refusing the orders, asking him to explain to the Holy Congregation the reasons for the denial. If, however, these

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reasons should appear to be less just, the rejected candidate is granted a pontifical dispensation, so that he may be ordained by another Bishop. The Apostolic See, in this case, from the fullness of its power, having considered the reasons for the denial, granted the cleric Peter a dispensation so that he could be promoted to the orders by the Bishop of Savona, without the testimonial letters from the Bishop of his origin. However, it was ordered that the cleric should declare by oath his intention to remain permanently in the Diocese of Savona. For, according to Constitution *Speculatores*, § 11, in order to acquire domicile, for the purpose of receiving the orders, in addition to the fact of residence, it is required that one truly and actually have this intention, and affirm it by oath. And it is also clear from the cited Constitution, § 12, that the letters of testimonial from the Ordinary of his origin must be presented, as mentioned above, and that a similar mention of them must be made in the letters of those who receive the orders. Therefore, it was properly added in the resolution, after the words spoken with the Most Holy Father. For this is usually added to resolutions, in order that the concession of grace does not violate any provision of law, from which the Holy Congregation cannot dispense. Therefore, the Secretary refers the matter to the Most Holy Father, who usually approves it. In this matter, Constitution *Speculatores* was an obstacle, to which it was necessary to derogate.

AUCH ADMINISTRATION OF THE SACRAMENTS AND FUNERALS. July 9, 1881.

SUMMARY OF FACTS. The Archpriest Canon of the Chapter of Auch, with a suppliant letter, presented the following: The Chapter of Auch devoted itself to drafting statutes in the year 1874, which consisted of 41 articles. These statutes were presented to the judgment of the Holy See, and the S. C. C.

[*Latin ed. p. 448*]

448 Concerning the ADMINISTRATION OF THE SACRAMENTS AND FUNERALS, on August 11, 1877, he expressed his opinion on all articles, except for article 40, regarding which the present question is raised. Article 40 was worded as follows: ”When a Canon, whether sick or in the parish of the Metropolitan Church, or in another parish of the city, receives the Sacraments, according to custom, this is done with the assistance of either the Archpriest or the proper Parish Priest. If a Canon dies in the parish of the Metropolitan Church, the funeral rites are performed by the Chapter, preceded by the 'Hebdomadario'.” A Consultor from the Sacred Congregation of Councils was consulted regarding this matter, and he judged the aforementioned custom to be entirely contrary to parochial rights. The aforementioned Archpriest protested, and now vehemently

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protests, against this interpretation, asserting that the aforementioned custom is contrary to parochial rights, and, on the other hand, is not legitimate, since it is not memorable, and was introduced through ignorance of the law. "The Archbishop, consulted in this matter, stated: 'This custom exists since the restoration of the archiepiscopal See in 1824, and has remained in force without interruption until this day. Furthermore, he does not prove that this custom was introduced through ignorance of the law, since many of the Canons, who were instituted at that time, were Chapter Canons before the Revolution; from which it can be inferred that this custom was in force at that time, and was transmitted to the present.'" The Chapter, on its part, states that article 40 was unanimously approved by all, the Archpriest himself not excepted, who, if he had wished, could have immediately opposed this Chapter resolution; but he adhered to it, although he attempted to prepare some opposition.

Dispute: A SYNOPTIC SUMMARY OF WHAT IS OPPOSED TO THE HEBDOMADARIO. Regarding the first doubt, that the 'Hebdomadario' does not have the right to administer the Sacraments to Canons, whether in the parish of the Metropolitan Church, or in other parishes of the city, when they are sick, there seems to be no room for doubt. Since it has been explored in law...

[*Latin ed. p. 449*]

ADMINISTRATION OF THE SACRAMENTS AND FUNERALS 449: It pertains to the pastors to administer the sacraments to all the Christian faithful within the boundaries of their own parish, according to their pastoral office. This is stated in Clement. I, §. Concerning burial, and from the decree of the Holy Council of Trent, Session 24, Chapter 13, concerning reform, it is stated: "The Holy See commands the bishops, for the safety of the souls entrusted to them, that they clearly assign to each people certain and proper parishes, so that each may have his own permanent and particular pastor, whom they may know, and from whom alone they may lawfully receive the sacraments." The same is stated in the Roman Catechism, part 2, on the external sacraments, §. 21; where it is established that it is not permitted, except in cases of necessity, without the permission of the pastor, to administer the anointing of the sick. This is confirmed by Benedict XIV in the Synodical Decrees of the Diocese, I, 8, chapter 4, number 7; where it is stated that the administration of the sacrament of extreme unction pertains privately to the pastors, and that the pastor alone is to be the ordinary minister thereof. Since these things are so, it is not surprising that all the doctors agree on this point; Barbosa, Book 3, Decretals, Title 29, on Parishes, number 9, adhering to the disposition of Clement I on privileges, and others generally. It does not matter whether the parishioners are laymen or clerics; since even clerics, unless they hold a benefice with residence elsewhere, and reside there, are considered proper to that pastor, with

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respect to the parish in which they live; Tuschus, V, on Parishes, council 99, number 1. Vallensis, ibid., §. 1, number 12. Engel, ibid., number 22. Furthermore, it has been determined that canons or dignitaries, whether in the parish of the metropolitan church, or in other parishes of the city, are not proper parishioners for a week; it seems spontaneously to follow that the right to administer the sacraments to such canons or dignitaries who are sick pertains to their own pastors. This is consistently resolved by the Holy Congregation, especially concerning canons and beneficed clergy of the cathedral church who are infirm, but reside in other parishes, as is clearly evident from the documents of Mantua, March 5, 1680, to IV; from Tiburtina, May 12, 1685, to I; from Tolentino, September 11, 1699, to I; and from Gubbio, March 12, Acts, Volume XIV, page CLXVI, number 29.

[*Latin ed. p. 450*]

450. CONCERNING THE ADMINISTRATION OF THE SACRAMENTS AND FUNERALS, and April 2, 1729. Nor does any contrary custom prevail, which is prohibited by the Council of Trent (Trid. Sess. 24, cap. 13, concerning burials). Hence, the Sacred Congregation of Councils, adhering to the principles of this law and to the Constitution of Pope Pius IV, *In Principis Apostolorum Sede*, has declared that any custom contrary to parochial rights ought to be considered an abuse and a corruption, as can be seen in Varen. *Iurium Parochialium*, August 28, 1756; Nullius *Iurium Paroch.*, January 29, 1825; Oritana *Iurium Parochialium*, September 22, 1877, §; Incassum, *Platien. Iurium et praeeminentiarum*, February 15, 1879. (1) After these considerations, the answer to the second question seems clear. For if it pertains to the Parish Priest to perform all things within the boundaries of his parish that relate to the exercise of parochial rights, as stated in Chapter 2 concerning Parish Priests, and as Clement [VIII] previously stated concerning burials, if the funeral office, in the presence of the deceased, is considered among the strictly parochial rights, then when is the deceased to be buried, if not under the Parish Priest, within whose boundaries is the church or oratory, as the Sacred Roman Congregation *Decretum Urbis et Orbis* of December 10, 1703, clearly states? It seems to flow necessarily from this that it pertains solely to the Archpriest to preside over the funerals of Canons, to grant absolution, to perform the funeral office, and to do all those things that, according to the discipline of the Church, are customarily performed over the bodies of the deceased. And rightly so, for other Canons, (as Cardinal de Luca states in *de Parochis*, discourse 46, number 5), of the same Church to which they have habitual care, are not considered Parish Priests; nor are their benefices considered to be under their care— therefore, they cannot claim a parochial right; and therefore, neither the right to perform funerals, which is not doubted to pertain to parochial rights.

WHAT FAVORS THE WEEKLY [PRIEST]. On the other hand, the

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Weekly Priest claims the right to administer the sacraments to the Canons: (1) This question is found in Volume XII, page 551. See also the same Volume XII, page 498, column 2, with the words, "Often, often..." where something is noted regarding the question of whether the decrees of Trent can be annulled by contrary custom. Compare also the note cited in Volume XIII, page 553 and following, concerning the decrees of Trent that can be annulled by contrary custom.

[*Latin ed. p. 451*]

ADMINISTRATION OF THE SACRAMENTS AND FUNERALS 45. Not only in the parish of the metropolitan Church, but also in other parishes of the city, with the general provisions of law set aside, and entirely from the customary law, which has prevailed in the Auxentian diocese since the restoration of the Archiepiscopal See, or since the year 1824, and which, without interruption, continues to be in force to this day. Indeed, any human law, even a canonical one, can be abrogated by a reasonable and legitimately prescribed custom, as is held in Cajus, final, de consuet.; L. de quibus ff. de legib, and I, 2 Cod. And it is long established that Benedict XIV, in his Decrees of the Diocesan Synod, book 12, chapter 8; Schmalzgrueber, *Ius Can.*, part 1, title 4, number 20; and that this custom can be introduced in a place, notwithstanding a law that resists and prohibits it, unless the law adds that such a custom is unreasonable, as many cited authorities teach, Bonae disp. 1 q. 1 punct. ult. §. 3; Anchar, con. 51 *in fine*; Glossa in Clement. Statutum de elect. Especially, it must have force in controversies concerning precedence and jurisdiction, as Pignat. Consult. Can. 25, number 2, volume 10; Piton, *Discept. Eccles.*, 914, number 9; and S. O. O., in Casertana, August 2, 1823, teach. On the same matter, see the Congregation formally discussing the article concerning the Administration of the Sacraments and Funerals, May 29, 1869, regarding the following question: Whether and to whom the right belongs to administer the last sacraments to the titular and honorary canons residing in the parish of St. Benignus? The answer was: Affirmative, with the favor of the Chapter, regarding the titular canons; regarding the honorary canons, they are assisted (1). Furthermore, it seems reasonable to transfer the exercise of certain parochial rights to the Chapter through custom. But, besides the fact that this custom of the Auxentian Cathedral is reasonable, it also appears to be legitimately prescribed. Indeed, it is established in law to introduce (1) How, however, this second part of the question was resolved, regarding the honorary canons, can be seen in Volume IV, page 578.

[*Latin ed. p. 452*]

452. The custom concerning the administration of the sacraments and funerals, which is contrary to ecclesiastical constitutions, is deemed sufficient if it has lasted for forty years. Felin, in Chapter 1, number 13, concerning

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Trent; Reiffenst., book 1, Decret., title 4, number 105. However, when it is a question of a custom lasting more than forty years, it is evident from the information provided by the Archbishop, who states: "This custom has existed since the restoration of the Archiepiscopal See in the year 1824, and has continued without interruption to this day. Indeed, the Archbishop of Aux, without foundation, believes that this custom was in force in his Archdiocese even before the French Revolution; from which it can be inferred that this custom has been in use in this time and has been passed down to our time." It would be a futile effort to object that, by a Bull of Pope Pius VII, all privileges and rights of the ancient Chapters were suppressed and extinguished (1). Since Cardinal Caprara, in the decree for assigning the boundaries of each Diocese, among other things, recommended to the Bishops that, in their statutes, whether newly established or amended, they should take into account the praiseworthy customs previously in force; and since this decree was issued both before and after the French Revolution, it deserves to be considered. To this custom is added article 40 of the Chapter statutes: "Weekly, to the sick Canons, either in the parish of the Metropolitan Church, or in another parish of the city, the sacraments are administered, by assistants or the Archpriest, or by the proper Parish Priest." Furthermore, this article 40 is to be maintained in full force; firstly, because it is based on a legitimately prescribed custom; secondly, because it was issued with the consent of all the Canons, and with the acceptance of the Archpriest himself; and thirdly, and especially, because the Sacred Congregation of the Council, to which the aforementioned statutes were submitted for approval, on August 11, 1877, expressed its opinion on all articles, except for article 40, concerning which it [the Congregation] remained silent (1).

(1) See what we noted in Appendix II regarding the Concordat entered into in the year 1801 between the government of France and the Apostolic See, Volume XIV, page 181.

[*Latin ed. p. 453*]

ADMINISTRATION OF THE SACRAMENTS AND FUNERALS 453. This silence, it seems, ought to be considered equivalent to approval; since it cannot be presumed that the Holy Office would have remained silent on this matter, if anything in it contained something that would be contrary to the decrees of the Council of Trent, or adverse to the salutary discipline of the Church. Regarding the second question, however, the chapter argues that it is not necessary to elaborate much, since the Sacred Congregation of the Council has repeatedly defined that questions concerning funerals are to be resolved according to the customs prevailing in each place, especially in Divion. (1) Concerning the administration of the sacraments and funerals, on February 29, 1867. That this chapter enjoys the right of prescription is demonstrated by both the chapter statutes and the

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words of the Bishop: "For this custom has existed since the restoration of the Archiepiscopal See in the year 1824, and has remained without interruption until this day." Therefore, it seems that there is no room for doubt that the aforementioned chapter should be maintained in this quasi-possessive right. And this even more so, because the funeral rites are like a consequence of the administration of the sacraments. With these premises stated, the following questions are to be elucidated. I. To whom does the right belong to administer the sacraments to canons, whether in the parish of the metropolitan Church, or in another parish of the city, in the case of illness? II. To whom does the right belong to perform the funeral rites of canons who die in the parish of the metropolitan Church, in the case? RESOLUTION. The Sacred Congregation of the Council, having considered the matter, decided on July 9, 1881, to respond: To I and II, affirmatively, with the favor of a week and more (2). (1) This question was referred to in Volume III, page 127. Since the second part of the first question remained unresolved, it was proposed on March 29, 1869, and referred to in Volume IV, page 577. (2) Because among the DD. there are still...

[*Latin ed. p. 454*]

454. CONCERNING THE ADMINISTRATION OF THE SACRAMENTS AND FROM WHICH FUNERALS ARE DERIVED: I. It can be gathered that the force of laws is lost through a contrary custom, reasonably and legitimately introduced, because custom has the force of law; but just as a later law abrogates a prior one, so too a custom abrogates a law. II. It is permissible to demonstrate that a custom legitimately prescribed in a matter, and reasonable, exists; for reason does not forbid that the canons of a cathedral church be the ultimate ministers of the sacraments to their colleagues, even if they are sick in another parish of the same city, and that the funeral rites be performed for them by the parish priest in the chapter house. III. To legitimately prescribe a custom, besides other properties, the tacit consent of the prince is required; which occurs when the prince, knowing of the custom, does not contradict it, when he could conveniently do so. IV. It seems that it can be gathered that the tacit consent of the prince was not lacking to strengthen the custom in the matter, which perhaps has been in force for an unforgettable time throughout Gallia, from the fact that the Sacred Congregation [of Rites] remained silent concerning article 40 of the statutes of the chapters, in which this custom is especially discussed. Regarding the question of whether the Tridentine law can be abrogated by a contrary custom, something should be noted in the case under consideration. The Tridentine Council, Session 24, chapter 15, concerning reforms, is entirely opposed to the custom, as it is said, which is in force throughout Gallia, according to which the hebdomadarius [a cleric responsible for the church during the week], in place of the parish priest,

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claims the right to administer the sacraments to other colleagues who are sick, whether in the cathedral parish or in another; and also to perform the funeral rites for canons who die in the parish of the cathedral church. In the years 1867 and 1869, as is related in the notes of this question, this custom was submitted to the judgment of the Apostolic See, as the present question is: because the parish priest, adhering to common law and especially the Tridentine law, considered that the parochial rights could not be harmed by this custom. But the Sacred Congregation seems to show that a custom of this kind can be valid, and that the Tridentine law can be prescribed by a contrary custom, reasonable and legitimately prescribed. "And no reason for exception can be given, since this also is a human law, although it may prohibit a custom..." Suarez, *De Legibus*, book 7, chapter 19, paragraph 19.

[*Latin ed. p. 455*]

455. OBSTACLE TO MARRIAGE. July 9, 1881. SUMMARY OF THE CASE. Moved by love for the young woman Assumpta, and being loved in return by her, Anthony, a Baron, decided to take her as his wife. However, when the wedding was about to be celebrated, Anthony's mother, having learned of the matter, formally lodged a dissent with the Sacred Congregation, in order to completely prevent the celebration of the aforementioned marriage. Against this obstacle raised by the mother, Anthony appealed to the same Sacred Congregation, seeking to have it removed as unreasonable; and after the matter was brought before the court, he was declared to have fulfilled the necessary conditions, and the obstacle raised was declared null and void by a decree of the court. Appealing against this decree, the Baroness, Anthony's mother, presented a petition to the Sacred Congregation. Anthony, her son, supplicated for the faculty to enter into marriage, even though his mother's appeal was pending.

SYNOPTIC DISCUSSION OF THE LAWS.

THE MOTHER'S RIGHTS. First of all, it must be noted that the law favors the Baroness, for it is established by law that marriages entered into by family members without the consent of their parents are illicit, as stated in chapters *Aliter* and *Nostrates caus.*, question 5, and noted by Tertullian, *Ad uxorem*, chapter 9, that unless there is a reason, family members who contract marriage without such consent commit a very grave sin. And rightly so, for honor and reverence are due to parents, and it is fitting that sons should not enter into such a grave and permanent undertaking without their counsel; Liguori, *Opera Moralia*, I, VI, number 849; Scavini, *De Sacram. Matrim.*, Tract. XII, Bishop 1, Chapter 1, Article 1, Volume 3, page 340. Therefore, such marriages are to be considered forbidden, just as they

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are forbidden for the most just reasons.

[*Latin ed. p. 456*]

456. The impediment to a valid marriage is attested to by the Council of Trent, Session 24, chapter 1, concerning Matrimonial Reforms, with these words: "The Holy Church, for most just reasons... has always detested and prohibited such unions." Therefore, it seems that a marriage of this kind should be prohibited, since there are several just and legitimate reasons to do so. Indeed, the case in question involves a marriage being entered into by a son from a noble family, with a woman of a far inferior condition, whose family is devoted to commerce. Such a marriage cannot be permitted, first, because of the grave sin that Anthony would commit through disobedience to his mother, in a serious matter contrary to the precept of the Lord: "Honor thy father and thy mother" (Ephesians 6:2 and Colossians 3:20); and second, because of the irreparable harm that would be inflicted upon his mother, and upon the honor and dignity of the family, as unanimously taught by Doctors, theologians, and canonists, as can be seen in d. Bonaventure, *In IV Sententias*, question 3, article 2, verse, responding to the argument. Therefore, ecclesiastical judges should use their authority to assist parents, so that such marriages do not come to fruition, actively preventing them for this purpose, in order that enmities, scandals, and other evils of this kind may be removed, which are usually the consequence, as stated by Layman in *De Sponsis*, treatise 10, part 1, chapter 1, number 3; Dicastil in *De Sacramento Matrimonii*, disputation 4, doubt 19; and therefore, neither the Church nor the parish priest should grant permission to sons or daughters to marry against the will of their parents, especially when such a marriage would be a disgrace to them, as Adam Opatov teaches in *De Sacramento*, treatise on Marriage, disputation 1, question 18, number 158; Pignatel, *Consultationes Canonicae*, 11, total, volume 4; and Piton, *Disputationes Ecclesiasticae*, 52, number 84. Furthermore, that the reasonable dissent of the parents should be included among those most just reasons, by which the Council of Trent and the Holy Church have always detested and prohibited marriages contracted against the will of the parents, is stated by Piton in *Disputationes Ecclesiasticae*, observation 52, number 85, volume 2. Moreover, in the case of Anthony, it seems impossible to consider his mother's dissent as unreasonable. Indeed, it has been established that Anthony...

[*Latin ed. p. 457*]

OBSTACLE TO REMOVAL 457: The lack of necessary means to sustain the burdens of marriage, since he has an annual income of only 350 florins. Furthermore, it is established that Assumpta herself does not possess a substantial dowry, by which Anthony could be assisted in bearing the aforementioned burdens of marriage.

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RIGHTS OF THE CHILD. On the other hand, it must be considered that, whatever has been established by the common civil law regarding the marriage of children and servants, without the consent of the parents or masters; according to the constant discipline of the Church, derived from the sacred canons, the consent of the parents is not required for the preliminaries of the marriage of children to be valid, as stated in Reiffenst. Ius. canon. lib. 4, tit. 1 §. 1, no. 24. Even more so, this holds true regarding the contracting of marriage, as taught by St. Thomas [II-II, q. 14, art. 5]: "Neither servants are bound to obey their masters, nor children their parents, concerning the contracting of marriage or the observance of chastity, or anything of that kind." And it was indeed wisely decreed thus; for once a person has reached the age of puberty, with regard to those things that concern their own status, they are released from paternal authority and become sui juris, so that, even against the will of their parents, they can contract marriage or enter into religion, as taught by the same St. Thomas in 4 Sent., dist. 38, q. 1, art. 1, §. 3, ad 2, and dist. 28, art. 3, ad 1. Therefore, it is not surprising that the Council of Trent, Session 24, Chapter 1, on the Reform of Marriage, anathematizes those who assert that marriages of children, celebrated without the consent of the parents, are invalid, and that parents can make such marriages valid or invalid. Adhering to these principles, the Sacred Congregation has not infrequently granted permission to contract marriage, even when all the parents and noble relatives opposed it, as can be seen in Florence on January 12, 1726, and in Trent on September 7, 1793. The Bishop added: "The reasons given are of little weight; for if Anthony, already of mature age, has an income of only 350 florins..."

[*Latin ed. p. 458*]

458. The impediment of remoteness cannot be alleged. Furthermore, neither the lack of income, nor the instability of character, of which Anthony is accused, nor the inadequacy of the dowry, nor the disparity of condition between the betrothed, constitute a valid argument for a legal impediment. If these reasons, which are presented to establish an impediment and to prevent the marriage of the son, are not deemed sufficient, then it follows that the judgment of the Curia M. must be confirmed. After considering both sides, the Most Eminent and Reverend Fathers decided to determine the response to be given regarding the question of whether the judgment of December 28, 1880, should be confirmed or rejected in this case.

RESOLUTION. The Sacred Congregation of the Council, having considered the matter, on July 9, 1881, decided to respond: "The judgment of the Episcopal Curia is to be confirmed, and furthermore (1)."

(1) *Collectanea Melvillanae de Remotione Impedimenti*, Vol. XIII, 440; whatever is found therein appears to be applicable to this case. It is added for the sake of clarity that this resolution also reaffirms the general discipline of the Church, derived from the sacred canons, namely that the

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consent of the parents is not required as a matter of necessity for the valid commencement of the marriages of children.

NULLITY OF MARRIAGE. July 9 and September 10, 1881.

SUMMARY OF THE FACTS. A marriage was begun between Sophia K. and Adam M. in the year 1866, although it appeared that the woman did not wish to enter into it. However, after the marriage was celebrated, the spouses performed their marital duties, and a child was born. But over time, the husband did not restrain himself within the bounds of decency, but day by day he indulged in vices, and especially in wine, and in unrestrained lust.

[*Latin ed. p. 459*]

NULLITATIS MATRIMONII 459. The foundations of the marriage appeared to be crumbling, hence arose disagreements between them. Sophia frequently visited her father's house, and there, in the presence of her husband, she was treated with such affection, as long as her parents deemed it proper. But Adam was unwilling to abandon this deceitful path, and the wife's health was endangered by this very reason, so Sophia returned to her parents' home, and the husband no longer resisted. Therefore, Sophia obtained a separation by judicial decree on April 20, 1873, and a settlement was reached. With this judgment concluded, the nullity of the marriage, as it was contracted under duress and fear, was proclaimed by the same ecclesiastical court in 1877, and she emerged victorious. However, this judgment was appealed to the Tribunal [Curia] T., which, overturning the previous one, ruled in favor of the validity of the marriage. Then, Sophia filed an appeal with the Sacred Congregation of the Holy Office [S. C. C.] on July 31, 1880.

A SYNOPTIC DISCUSSION: DEFENSE OF THE WOMAN. Marriage consists solely of consent, and consent cannot exist without absolute freedom; as Alexander III teaches in chapter 14 on betrothals. - Marriage is contracted solely by consent, and when this is questioned, it must enjoy complete security, the nature of which must be investigated. Therefore, the Church has taught, and affirmed through judgments, that greater freedom is required in marriage than in other conventions; Sánchez, book 4, section 6, number 2; Pontius, on impediments to marriage, cause 31, questions 2 and 3, section 12; Cosci, on separation, book 1, chapter 8, number 93. Schmalzgrueber affirms that this is not only in accordance with the law, but also beneficial to the Christian republic, book 4, title 1, section 394. But all these things that reason and experience require in such judgments, are present in this case: for Sophia, as much as she could, rejected her husband, whom she detested with all her heart; but her parents, burning with the desire to arrange the marriage, used whatever means they could, through

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influence and domination, to persuade their daughter.

[*Latin ed. p. 460*]

460. THE NULLITY OF MARRIAGE was alleged. Violence prevailed, which is demonstrated in the very act of marriage and in the initial exchange of arguments. The nullity of the marriage is asserted by Schmalzgrueber, who in part 1, title 1, § 393, states: "And from this it follows that the marriage is invalid... contracted by a virgin with a young man, whom she rejected, out of mere reverence for her parents, when joined with a reasonable fear of indignation, reproach, harsh treatment, and similar inconveniences." However, the defender asserts that in this case, not only this reverential fear, but also a common fear of a very serious nature, was present. As far as reverential fear is concerned, it is certain from the testimony of the woman and others that Sophia, compelled by the fear of her parents' indignation, gave her consent. In law, it is well known that the conditions of the law, imposed by prudent individuals, to assess a serious and constant fear, are inapplicable in the case of reverential fear, in which the natural duty of reverence mitigates the gravity of violence; Sánchez de matr., book 4, and disputation 1, number 10; Rota dec., 491, number 8, cor. Royas, and dec., 870, cor. Emerix, where it is stated: "For it does not matter that it is not proven that the one who instilled the fear was of a terrible nature, or accustomed to carrying out threats, because this is required in the case of strangers, but not in the case of a father, to whom, by the law of nature, reverence is due: for in these circumstances, reverential fear, joined with the danger of a serious evil, is sufficient, if it is reasonably believed to arise from the mere indignation of a parent, as Garz. etc. affirms." But the defender also argues that a common fear of the greatest magnitude was present in the case, beyond the necessity of the woman's testimony. First, he says that the interpretation of the will is of the greatest importance in assessing the fear: "For if anyone, with a certain and deliberate intention, rejects something, it is presumed that it can only be obtained by violence," Rota dec., 23, paragraph 42, number 17 and following; Rec. dec., 320, cor. Ludovisi, number 7; Cosci de sep. thori, book 1, chapter 8, number 54, who teaches: "On the part of the woman, the fear is said to be proven by witnesses if they testify about her aversion towards...

[*Latin ed. p. 461*]

NULLITY OF MARRIAGE 46 "the spouse, both before and after the marriage." The actress's behavior, indeed, demonstrates a disposition utterly foreign to all acts of investigation, and especially the testimony of the husband, who was obliged to declare that he married her not out of love and inclination, but only from external reasons. Moreover, if we consider the constant threats of the father, placing her as a governess for the children, confining her to a monastery, expelling her from the house, refusing the pa-

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ternal blessing, and even cursing her – he claims this reveals a disposition born of fear, which is considered the most serious defect in law, namely, that which affects a strong and steadfast man. For such threats are those which, according to common opinion, are most vehement and terrifying, *Ursaya, Discept., eccl. tom. 4, pars. 1, disp. 1, § 2, no. 58 seqq.*. Furthermore, relying on the authority of several witnesses, he demonstrates that the father's will was so firm that Sophia could not even consider resisting, because such resistance was not tolerated in that family. Moreover, several witnesses attest that the actress's father, enraged, not only rebuked his daughter with words, but also beat her with a rod; which seems truly unheard of in a respectable family. Now, since at the court of M. some witnesses stated that certain individuals were utterly unreliable, the Defender, with regard to those same witnesses, stated: either legitimate objections against the witnesses or their testimonies must be presented and proven, so that their credibility may be diminished, or else they must be completely believed. However, given the evident facts, the truth becomes clear: for in any, even the most trivial, contract, according to the aforementioned decree, "that which is done under duress will not be considered valid." This duress is considered that which compels the contracting girl; *Haimberger, Diritto Romano privato e puro, lib. 1, cap. 4, § 89*, according to Cicero's opinion – "everyone ought to fear" – Thus, if the matter were the sale of property in Clinchamps, and the girl were beaten by her father during the night and then forced to sell, no one would deny the nullity of the sale; and this much more so, since the sacrament of marriage is involved, in which a greater...

[*Latin ed. p. 462*]

462 The validity of marriage, like that of other contracts, requires certain conditions according to Church discipline. After a certain period of time elapsed after the marriage, concerning cohabitation, offspring, and other matters, the Holy Office has repeatedly ruled that a marriage can be declared null, even if the wife has lived with her husband for many years and has had children. Thus, in the case of the marriage of Herbipole, a decree of nullity was issued in June 1859. In Coenomanen, the marriage was celebrated on June 10, 1865, and in Romana, the marriage was celebrated on September 15, 1629. Never is a purification admitted after a nullity has once been proven, unless, above all, two conditions are present: knowledge of the nullity that could be remedied, and peaceful and spontaneous cohabitation; Sánchez, *lib. 4, disp. 18, num. 3 seqq.*, teaches: "The second condition is that the one ratifying the marriage must know that the marriage previously contracted was null..." The final condition is that the cohabitation must be entirely spontaneous. Regarding knowledge, it is rightly observed that it is futile to require this of the woman who was completely ignorant of the nullity of the marriage, as is evident from the testimonies of Sophia herself, of her parents, and of other witnesses. As for cohabitation,

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it is never argued that it was free, since the woman spent the majority of the time in her parents' home, and did not return to her husband except under duress, and had no means of escape. Finally, a marriage, rendered invalid by a public impediment, never becomes valid through purification, according to the tradition established after Tridentinum, which requires a specific *forma* for its validity. Therefore, a marriage that is null cannot be reinstated in any other way than by being contracted again before the Church, unless it is proven that the impediment that caused the nullity has ceased; Barbosa, *de off. Episcopi, alleg. 32, num. 149*. Under the current law, cohabitation cannot validate a marriage; a new consent is also required, along with the *forma* of the Council. It is a universally accepted principle of jurisprudence that a public impediment is considered to exist entirely, even if it is actually hidden, whenever it can be proven to the common knowledge of people, Reiffenst., *Append. de disp. sup. imp., §. 2, num. 44 seqq. et num. 60*; Sánchez, *de matrim., lib. 2, disp. 37, num. 11*.

[*Latin ed. p. 463*]

Concerning the NULLITY of marriage, it teaches: "If I have three, I believe the witnesses." If a full proof of an impediment exists, it must be presented before the parish priest (463). These are the OBSERVATIONS of the DEFENDER concerning the VALIDITY of the bond. However, all these objections are met by the diligent defender of marriage. For, although the Church has declared that a marriage contracted under duress or by fear is subject to nullity, in order to prevent the evils of men, she has decreed that not every fear necessarily entails the nullity of marriage, but that a grave fear, under certain conditions, should be considered sufficient to invalidate the marriage. The opinion of the Doctors and Canonists is unanimous on this matter. Thus, in *De Matrimonii*, Decree 57, number 16 and following.

The question arises: How many conditions are required for fear to be considered grave and to invalidate a marriage?

Jurists and theologians agree that five conditions are required. The first is that the evil or damage threatened, unless the person consents to the marriage, must be a grave evil or damage, capable of inspiring fear even in a steadfast man (L. 1 ff. concerning that which is caused by fear, in which these words are found: "Labeo says that fear must be taken, not any fear, but a greater evil," where the gloss explains, meaning a great evil). Therefore, if the matter concerns a slight evil or a small damage, the fear would not be grave, as all the Doctors mentioned by Sanchez, book 1, dispute 4, Pontius, book 4, chapter 3, and Salmanticensis, chapter 9, point out, and they provide the following examples of grave evils and damages:

1. Fear of death and the loss of life (Cap. Cum Dilectus).
2. Bodily torments, floggings, or servitude.
3. Loss of one's own status, condition, or dignity, etc.

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Indeed, there is nothing in the matter presented that proves the existence of fear, not even a grave fear, nor anything that would be sufficient to declare the marriage null.

Furthermore, the witnesses, as many as are heard judicially in the matter, do not testify to any coercion, except for a slight, impossible, and generic coercion.

[*Latin ed. p. 464*]

464 Concerning the nullity of the marriage, specific evidence is required, as is demanded by Bossius, chapter 12, number 339. To make this matter clearer, the deposition of sworn witnesses is presented, who frequently visited the girl's home, from which, they state, nothing could be gleaned except that the parents, and indeed Sophia herself, but the entire family, were raised with such severity and rigor that it was almost impossible for the father, in particular, to not be obeyed. Therefore, the diligent defender concludes: the witnesses provide no evidence whatsoever of a grave fear concerning her qualities. Furthermore, any evils or damages, if any were inflicted by the father, he contends, were brought to light only by Sophia herself, and although these are admitted, they are, in truth, not so grave as to cause mental disturbance, and therefore, do not necessarily imply consent or the nullity of the marriage. It has not been legitimately proven that Sophia's father was accustomed to ordering executions that threatened harm: which is entirely required by the Doctors, and especially Sánchez, book 4, section 4, number 21. Hence, even if the father struck his daughter once, this single act does not prove a custom, as the delicate decision 25, number 20 states. And therefore, this custom is not proven by a single act, when the one who threatened only carried out the threat once, but at least two acts are required, according to the teaching of the Archdeacon in chapter Illud, at the end of district 12, Bartoli, and Abbot. This is all the more to be admitted in this case, if the circumstances of the events and the added details are considered. Indeed, everything was prepared for the wedding, when Sophia declared to her father that she did not wish to marry Adam. The father resisted this declaration, and, holding a stick, seized by a sudden fit of anger, struck her. However, it would be ridiculous to deduce the father's cruelty and the custom of carrying out threats from this single act. Furthermore, the defender added that, even if there was fear, it did not persist up to the celebration of the marriage, as is required by law to invalidate the marriage. Indeed, Sophia, in accordance with the declaration of freedom required by Russian ecclesiastical law,

[*Latin ed. p. 465*]

NULLITY OF MARRIAGE 465. Before the witnesses, she spontaneously and freely signed a document, prior to the day of the marriage celebration, in which she stated nothing that would contradict what the advocate

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for Sophia asserts, since the witnesses, by their office, testify that Sophia spontaneously and freely signed the declaration, and that they observed no disturbance in her at that time. Finally, the advocate argues that, whatever may be the dispute, it must be remembered that we are dealing with a case of invalidating a marriage after seven years of cohabitation; for this prolonged cohabitation and union, frequently consummated with marital affection, would have completely dispelled any such doubt, and the marriage would have been validated. Furthermore, it would not be helpful here to object that, after the Council of Trent, a marriage can only be validated before the parish priest and witnesses. For it is added there that this is only permissible when the impediment is public, and certainly not when, as in this case, it is hidden and unknown to both the parish priest and the witnesses. Moreover, the advocate concludes, citing Giraldi, *Expositio Iuris Pontificii*, book 4, page 1, "If a marriage has been contracted with a hidden impediment, and the solemnity prescribed by the Tridentine Council has been observed, it is not necessary to renew the consent before the parish priest and witnesses, but secretly, between the contracting parties," citing the declaration of Pope Pius V, the decrees of the Holy See, and the judgment of the Sacred Rota, as well as *Benedict XIV, Institutiones Ecclesiasticae*, 87 §. With these considerations in mind, the following point is to be examined: 1> Whether there is proof of the nullity of the marriage in this case.

RESOLUTION. The Sacred Congregation, after deliberation, on July 9, 1881, decided to respond: Affirmative, but maintaining the status and the right of legitimate filiation for the daughter. On September 10, the question was again posed under the usual doubt: Whether one should adhere to or depart from the decisions in this case. And the response was: "In the decisions." *Acta*, Volume XIV, page 156, 30.

[*Latin ed. p. 466*]

466 OF THE NULLITY OF MARRIAGE: From which [points] one may gather: I. Since the sacrament of marriage consists in consent, therefore, the contracting parties ought to enjoy full freedom, so that the act may not be rendered invalid; for a greater freedom is reasonably required in this matter than in other civil agreements, which can be rescinded by the authority of a judge or by the disagreement of the parties. II. Hence, a marriage contracted by a virgin with a man, out of reverence for her parents, joined with a reasonable estimation of indignation, harsh treatment, and similar inconveniences, is invalid. III. In the case of strangers, it is only necessary to ascertain whether the one who instilled the fear was of a terrible nature, or accustomed to acting in such a manner; but not in the case of parents, to whom due reverence is owed by law; and therefore, to render the marriage invalid, it suffices that reverential fear, joined with a grave danger of evil, be reasonably believed to have arisen solely from the

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indignation of the parents (1). IV. In the matter of the father's customs, indignation, and vehemence, one must believe that Sophia was entirely aware of them; for the same witnesses, with one voice, testified that the father controlled everything according to his own will, so that the daughter could not even think of resisting, since she was not permitted to do so in that family (2). (1) It is fitting to recall the words of Tullius in the civil law: "All those whose lives are placed in the hands of another, frequently think about what that person, who has authority or power over them, can do, rather than what they ought to do." (2) Recall the matrimonial case, related in Vol. XII, page 403. In that case, a lengthy discussion was held regarding reverential fear, by which that marriage was declared invalid. As you will find in the present case, the decision of the offspring, born of the marriage, was consulted, so that, according to the doctrine of Alexander III in chapter concerning legitimate sons, written in book 2, page 442, the authority of the Church would hold that it is valid. There you will also find whatever was noted regarding a marriage that is null, due to a hidden impediment, and how it can be validated without the Tridentine form. Also, correct the typographical error, which destroys the entire edifice, on page 420, line 4, and read: "it must be established concerning the invalidity."

[*Latin ed. p. 467*]

467 NICE. OF RIGHTS, AND PRIVILEGES. Dated June 11, 1881, and March 18, 1882. SUMMARY OF FACTS. In the town of Menton, within the Diocese of Nice, there exists a confraternity, commonly known as the Brotherhood of Black Penitents, under the title of Mercy and of Saint John the Baptist; which, from the year 1639, has been joined to the Archconfraternity of Saint John the Baptist of the esteemed City. The superiors of this confraternity, by pontifical constitutions, and especially by the sentence of the Reverend Tribunal of the Apostolic Camera of April 22, 1788 (1), it was decreed that the confraters could perform the sacred functions in the church of the confraternity, customarily by priests who were well-disposed, independently of the local parish priest. In the month of April, of the year elapsed, the parish priest of the parish church, without consultation, chose a chaplain to preside over the sacred ceremonies, which are not of parish law, but pertain to the confraternity, and announced the aforementioned sentence. This election was strongly opposed by the parish priest of the parish church, who, considering that, according to the statutes by which such a confraternity is governed, and especially according to synodal laws, he had the right to perform the sacred functions in the aforementioned church, or, if not, to demand this office of a priest, maintained that the confraters could not validly elect a chaplain without his consent. The superiors, on the contrary, in order to defend their own rights, appealed to the Bishop, who did not consider it fitting to satisfy their wishes, but also, under pain of suspension, ordered the priest elected by them to perform

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the aforementioned functions (1).

(1) Regarding the question against the Curia and the parish priest, the confraters, in the year 1788, obtained a sentence from the Auditor of the Apostolic Camera, according to which they could freely sing and chant in the church of the aforementioned confraternity, or in the public oratory, solemn Masses, both of the Saints and for the Dead, either through the aforementioned Reverend Chaplain, or through other priests who were well-disposed; and therefore, to celebrate, etc., without any prior consent, license, dependence, assistance, or interference from the aforementioned parish priest for the time being of the City of Menton.

[*Latin ed. p. 468*]

468 Concerning the exercise of rights and privileges, it was decreed that the Sodalitas should not dare to perform any sacred function within the Church. At that time, the superiors of the confraternity appealed to the Sacred Congregation. The following is a synopsis of the arguments concerning the rights of the confraternity. The advocate stated that the Sodalitas freely exercised its right to elect its own chaplain, who celebrated functions, and Masses, both for the living and the dead, whether solemn or private, without any dependence, approval, or license from the parish priest. Nevertheless," he added, "in the year 1824, after the restoration of the province of Mentone to its former status, certain regulations were established by the Vicar General, which, according to numerous witnesses, and notably the presentation of the sentence of the year 1788, appear generally not to have been observed. Having stated these premises, he divided his argument into four points. Firstly, he affirmed that the Sodalitas has the right to appoint or elect a chaplain, without any approval from the parish priest, in accordance with the Archisodalitas of St. John the Baptist. Furthermore, it is undoubtedly the case that privileges, as granted to the Archiconfraternity, belong to all Confraternities affiliated with it, as demonstrated by the decree of the Sacred Congregation in Novara, September 3, 1718, and widely shown in the deliberations of the Sacred Rota in Brixia. In the case before Lancetta on January 22, 1712, the judges ruled that the confraternity has the right to elect its own officials and chaplain, at its discretion, for the performance of customary functions. Moreover, even setting aside the title of affiliation, the advocate continues, this is confirmed by the law and notably by the Decree of the City and the World of December 10, 1703, in response to questions III and IV (1). (1) You have this entire decree in Volume I, page 591.

[*Latin ed. p. 469*]

ARGUMENT 469: The argument seeks to derive an internal principle from the simple administration, based on what was transmitted by Cardinal De Luca, who, in matters of elections, excludes the approval of the Superior; See Note to the Council of Trent, Decree 31, paragraph 24. But this

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is not an election, but a simple designation. (1). Furthermore, in Vaivén, the right to choose a chaplain was proposed to the Sacred Congregation of Extraordinary and Regular Affairs on July 29, 1870, under the question: "Who has the right to choose the chaplain, and how, and to whom does it belong?" The resolution was: "Affirmatively, with the favor of the confraternity, although the Ordinary has requested the right to confirm the chaplain." Therefore, the opinion of the Auditor of the Chamber, necessarily following, establishes that the confraternity's priests are to be favored, excluding the approval of the Bishop, and even more strongly, the approval of the parish priest, since they should not be favored by them. Therefore, regarding the election of the chaplain, it is argued that the matter has been wrongly judged by Piton. See *Discipline Ecclesiastica*, 159, number 38; *Metrodotom*, II, Council 7, number 31; *Surdus*, volume IV, Council 467, number 11. In the second chapter, it is argued that all the celebrations of the Mass and the customary functions belong to the confraternity, since they do not in any way pertain to the exclusive rights and functions of the parish priest. Therefore, it distinguishes between the functions and rights that, according to Monacellius, in the *Formularium*, legal, volume 10, form 18, number 4, pertain exclusively to the parish priest, and those that are not merely parochial, and those that are called sacerdotal. In these last two functions, the parish priest has no authority. Therefore, based on the previous responses of the Decrees of the City and the World to Questions 5, 6, 7, 11, 12, 15, 17, it concludes that confraternities, with regard to non-parochial functions, are in no way subject to the jurisdiction of the parish priest. This, it asserts, is clearly evident from the resolutions of the Sacred Congregation in Lucca concerning parochial rights, on June 2, 1736; in Orte, on August 1, 1739; and in Rieti, concerning ecclesiastical functions.

(1) Recolé, Volume XIII, page 131, where, in the response to the second question, it is resolved that the Ordinary has the right to intervene in the assemblies of the confraternity, but can also cast a vote. If the Bishop cannot interfere in the affairs of the confraternities, it would seem that the parish priest can even less do so.

[*Latin ed. p. 470*]

470 CONCERNING the rights and privileges of the act of January 12, 1844; wherein, regarding the doubts: "Is it permissible for a chaplain to perform novenas, triduums, and other functions with exposition and benediction of the Most Holy Sacrament in the Oratory of St. Dominic, independently of the parish priest in this case?" and "Is it permissible for the same chaplain to solemnly celebrate Masses independently of the parish priest?", it is answered: "Affirmatively in all respects, according to the form of the Decrees of the Holy City and the Holy Congregation of Rites of December 10, 1703." From which, it is deduced that nothing new has been defined by the Auditing Chamber in 1788. Indeed, it was correctly judged that prior

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permission from the Curia is not required, which permission would be uselessly demanded in ordinary public functions of the Church. Regarding the third doubt, the orator argues that the question of whether the confraternity can freely administer its own goods has been definitively settled in decree number 31 of the Holy City and the Holy City, where, regarding the question: "Can confraternities administer their own goods and dispose of them without any dependence on the parish priest?", the Holy Roman Church responded: "Affirmatively." This resolution, it is deduced, extends to other revenues and offerings, according to Cardinal Peter Constantinus Äthan., Piggnatellio, volume 6, Council 83, number 3: "If, however, we are speaking of a confraternity of laymen, the administration of offerings pertains to the confraternities themselves." Bassius, *De Sodalit.*, question 7, number 7, states that confraternities can expend and allocate revenues and alms without the permission of the Bishop, who should not interfere in the administration, but should leave it to the confreres, according to the resolution of the Holy Congregation of Eastern and Oriental Affairs in Castellanen, November 14, 1603. This freedom to administer and expend is derived from the Tridentine Council, Session 22, chapter 9. Regarding the fourth doubt, the orator states that the statutes must be reformed in those articles that openly contradict the general decree and the opinion of the Auditor of the Chamber. For, he says, statutes that are contrary to the law are not maintained without the approval of the Apostolic See, since they lack the necessary requisites; hence, they have never been observed entirely, nor peacefully, as the predecessor affirms.

[*Latin ed. p. 471*]

RIGHTS AND PRIVILEGES 471. The parish priest has never interfered in the affairs of confraternities. Nor has he encountered any difficulties arising from the Concordat, which has never approved of the suppression of confraternities. On the contrary, Pope Pius VII, in response to a request from a certain Congregation to grant them certain privileges, replied that such privileges and indulgences had not been revoked; and that the Congregation had not been suppressed, but rather had been allowed to continue. Furthermore, the Orator does not find any obstacle in the Synodal Constitutions. For, while these preserve the particular privileges of Liège, safeguarding the particular privilege that a certain sodality may enjoy; they cannot prevent the execution of the Decrees of the Urban and Universal Church, as was recently demonstrated. The Congregation of Rites, in favor of the Sodality of Mercy in Lucca, resolved that, regarding the question proposed on March 30, 1878, it was decided that "it must be adhered to the General Decree of December 10, 1703; therefore, the aforementioned Sodality may lawfully offer Masses, both for the living and for the dead, through its own chaplain, and perform the other functions defined in the aforementioned decree, without any prior permission from the Cathedral

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parish priest, and the aforementioned Synodal Constitutions have no validity in this case, either to abrogate or to derogate from the aforementioned decree." This is in accordance with canonical jurisprudence, as evidenced in the Aggregation of Savona on July 3, 1705, before Motines. "As for the diocesan synod, it cannot derogate from the most important pontifical privileges granted through aggregation, since the Bishop cannot, through his Synodal Constitutions, decree anything contrary to the common law." *De Luca de Iudiciis, disp. 35, n. 5; D. Animali, Decis. 97, n. 8; Rota coram Coccin., Decis. 1619, n. 10, etc.*

RIGHTS OF THE PAROCHIAL CHURCH. On the other hand, the Prefect of the parochial church argued with all his might that the confraternity's members do not have the right to independently elect a chaplain, apart from the parish priest, because not only the confraternity's own statutes, but also the very custom of this kind...

[*Latin ed. p. 472*]

472 The nomination of chaplains, and the privileges thereof, are opposed by the zeal of the Confraternities. And, addressing first the question of the statutes, the Prefect observes: that after the French Revolution (during which the pious Sodalities were suppressed), when it was a matter of reconstituting the Confraternities, the Bishop, with the consent of the Prince Monoecen, devised a statute by which the election of chaplains, and all ecclesiastical functions, could not be carried out without the consent of the local parish priest. In order, however, that the members might not withdraw themselves from his jurisdiction, he wished to become the president of all the Congregations. These statutes obtained force and still obtain force: yet, never have the parish priests permitted the Sodalities to enjoy their privileges. Furthermore, it is not true that the Sodalities have always named a chaplain, without any opposition from the Bishop or the parish priest. But, as the Prefect, making a distinction between the statutes by which the Sodalities are governed and the custom, states that the custom is to have the patronage belong to him and not to the Confraternity; and it has been ascertained that from the date of July 20, 1824, when the statutes were drawn up by ecclesiastical and civil authority, until the present time, they have been constantly observed. Indeed, the aforementioned statutes, chapter 20, decree: that the chaplain of any Sodalitas is elected by the respective superiors, with the prior approval of the superiors. And he argues that this has been done for the best, since it is manifest from chapter eight of these statutes that the parish priest is to perform the duties of president of the Confraternities for the time being. Therefore, since the Sodalitas has accepted and observed the statutes from the year 1824, it cannot claim rights that date back before the French Revolution. Hence, the Prefect adds that the Confraternity, in order to defend its rights, vainly appeals to pontifical Constitutions and to the opinion of the Auditor of the Camera of April 20,

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1788, in favor of the Confraternity; for he contends that all rights in France, which were in force before the Revolution, were completely abolished by the Concordat concluded between the Holy See and the Director of the Republic. The Bishop says: "Sodal-"

[*Latin ed. p. 473*]

473. Concerning the litigations mentioned, as well as all other Confraternities, it ceased to exist; and its church was converted into a barn. Therefore, when it was necessary to re-establish the Confraternities after that devastation, it was important not to disregard the dispositions of the Government, which, after the Concordat of 1801, denied total dependence to these sodalities, with regard to their temporal and spiritual administration. It cannot be said that these Confraternities must be revived with all their privileges, since they have been extinguished by force. For the supreme authority of Pius VII suppressed all the churches of France in order to establish them anew (1). And if, by the will of the Holy Father, the dioceses and churches of that kingdom lost all their ancient privileges, it is difficult to understand how the privileges of the Confraternities could have been allowed to continue. Indeed, the Bishop confirms that all ancient rights and privileges were lost by the Confraternities by virtue of the Concordat, citing the example of the sodality commonly known as Madonna del Carmine in the Diocese of Nicaea, which, having lost its rights and privileges granted to it by the Holy See in the preceding century, petitioned to have those rights and privileges restored and recently obtained a new indulgence. After these statements, the Bishop exclaims: From this, it can be gathered that, in the judgment of the Apostolic See, privileges of this kind are considered to be extinct. And therefore, whether by statutes or by custom, the sodality lacks the right to choose its own chaplain, independently of the parish priest and without the approval of the Bishop. To the chaplain, who is acceptable to the Confraternity, the parish priest can deny the faculty of celebrating Masses for the living and for the dead, and of performing other customary functions, in accordance with the Concordat, the statutes, the law of the synod in force in the diocese, and the most recent agreement between the ecclesiastical authority and the aforementioned sodality. From the foregoing, it is clear that the sodality cannot invoke the Decree of Urban and Orbis in its favor. 1703: For it abandoned the conventions, agreements, and concordats, entered into between the parties and the Holy See (1).

(1) Recall what we have learned in Appendix II, page 181, Volume XIV, regarding the suppression of all dioceses and parishes.

[*Latin ed. p. 474*]

474 The approved rights and privileges, as well as the indulgences, synodal and provincial constitutions, and, indeed, venerable, or at least centennial, customs. Furthermore, the Bishop states, there are other reasons that

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suggest that the Association should not be granted independence, either from the Parish Priest or from the Bishop himself, lest further difficulties be added to those already existing. For if this were to happen, privileges would be admitted that pertain to civil government, which would be contrary to law and the concordat; privileges that, in fact, have already been extinguished. From what has been discussed so far, the answer to the third question seems easy. For, as clearly appears from chapter 8 of the statutes of the year 1824, the Parish Priest is constituted as the president of the Association for the time being; if the Parish Priest, when necessity demands it, is obliged to convene and preside; and if, therefore, these statutes are to be maintained in full force, especially those that have been carefully drafted and demanded for execution by the members of the Association; then the members, without dependence on the Parish Priest, cannot manage the affairs of the Association, nor can they dispose of them, which, as we have indicated, is the very president and head of the Association. Finally, the Prefect argues that the prayers of the members should be rejected. Indeed, if there were to be a place for reforming the statutes, it would happen either by law or by grace. However, such a reform does not seem to be permissible by law, because the statutes were promulgated by legitimate authority, accepted with a willing spirit by the Association, and have been consistently put into practice until our time, without anything ever being objected. Furthermore, it is established by law that pacts and agreements must be observed scrupulously; "Pacts must be observed," says L. 254 of the Code of Civil Law. But, the Prefect adds, such a reform of the statutes should not be sought even by grace, not only because the rights of the Parish would be harmed, but also because it would be extremely detrimental to the good of the souls of the faithful.

[*Latin ed. p. 475*]

HAVING stated the preceding rights and privileges, the following questions and doubts were raised by the E. E. P. P.:

I. Whether, by mercy, and in what manner, the right pertains to the Brotherhood to choose a chaplain in a certain case.

II. Whether the faculty pertains to sing the "Musa" [a funeral hymn] for the living, as well as for the dead, and to perform other customary functions through the proper chaplain, or through visiting priests.

III. Whether the members can administer and dispose of goods, without any dependence on the parish priest, and to what extent.

To the first three questions, an affirmative answer is given.

RESOLUTION. The Holy Congregation, having considered the matter, on June 11, 1831, decided to respond as follows: To questions I, II, and III, provision will be made in Quarten. Considering the particular circumstances, on July 20, 1824, it was decided.

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PROCEEDING OF THE CAUSE. Having obtained the benefit of a new hearing, the representatives of the Brotherhood of Mercy presented a summary of the restrictions and rights, so that, after considering all that had been presented, they might recede from the previous decisions, and give an affirmative answer to the three questions already proposed, according to the Decree of the City and the World of December 10, 1703, and the special judgments, and the decree recently issued in the same Nice, concerning the Sodality of that Institute.

(1) See Vol. I, page 582; Vol. VI, page 109.

[*Latin ed. p. 476*]

476 OF RIGHTS AND PRIVILEGES. Moreover, it is contended that there are no special circumstances present, for which one might deviate from the common law, and from Pontifical decrees. Certainly not from the part of the Bishop, whose rights are being questioned; for the matter concerns only the Parish Priest, who claims to be administering the Sodalitas in a manner contrary to the laws of the Church, and to its proper observance. Wherefore, from his resistance, greater dissensions have arisen, while the dispute is pending. From the newly presented evidence, the orator demonstrates that the Confraternity has always been under Gallican domination since 1809 and 1810, and has never relinquished the rights and privileges of the Archiconfraternity of St. John the Baptist. Furthermore, a newly issued document affirms that aggregated Confraternities do not require renewal, in order to enjoy the rights and privileges conferred upon them, even though they may have been suppressed by seditious movements. Finally, neither does the Government contend that special circumstances are present, since it is indifferent as to whether this or the other ceremony is celebrated, nor does it interfere in the internal administration. Furthermore, the Concordat concerns only diocesan circumscriptions and alienated property, and makes no mention of Sodalities, which perform pious works of charity for the poor and the deceased. On the contrary, the very existence of the Confraternity presents particular circumstances, so that the universal law may be observed. Thus, besides the right of aggregation, there is also the opinion of the Auditing Chamber, which in number 17, judged that the functions should be performed by the Chaplain without any prior consent, license, dependence, or interference from the Parish Priest. Moreover, in favor of this, there is also the decree of the Congregation of Rites, dated March 30, 1878, issued for the Fraternity of Mercy of the city of Nicaea, which is of the greatest importance, given that the same circumstances are present.

[*Latin ed. p. 477*]

477. A contradiction arises concerning rights and privileges. Especially since Pope Pius IX, may he rest in peace, in the treaty concerning the annex-

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ation, through Encyclical letters dated December 31, 1860, preserved the rights acquired by the Churches and pious institutions. Therefore, recently, the Congregation of Rites, in the aforementioned city of Nice, on March 30, 1878, in response to a question raised between the parish church and the sodality of Mercy, decreed: "It is to be observed that, according to the general decree of December 10, 1703, therefore, the aforementioned sodality may lawfully celebrate Masses, both for the living and for the dead, through its own chaplain, and perform other functions as defined in the aforementioned decree, without any prior permission from the parish cathedral." Having again considered these matters, the customary proposal was put forth: Should we adhere to the previous decisions, or should we recede from them?

RESOLUTION. The Sacred Congregation, under the date of March 18, 1882, responded: "Regarding points I, II, and III, after repeated consideration, we decide to recede from the previous decisions, and the Bishop, together with the sodality, shall reform the statutes, according to the general discipline of the Church, and shall establish legitimate privileges for the sodality."

FROM WHICH WE MAY GATHER THE FOLLOWING:

I. After the decree of the City and the World, issued in the year 1703, in order to resolve questions between parish priests and confraternities, it cannot be denied that these same confraternities have the faculty of choosing their own chaplains, who may perform all non-parochial functions within their own chapels, independently of the parish priest.

II. In addition to the rights and privileges that each canonically established sodality possesses through the aforementioned decree of the City and the World, and those which it acquires through communication, there are also those privileges that have been granted to the Archsodality, to which the sodality in question is affiliated.

[*Latin ed. p. 478*]

478 III. OF RIGHTS AND PRIVILEGES. The members of the sodality possess the rights, and that which is taken away from them is the administration of their own goods, and the power to dispose of them, as is stated above. Decree, under doubt 31. IV. Against these rights and privileges granted to sodalities by common law, no obstacle can be placed, neither by the statutes of the Ordinaries, nor by the constitutions of particular synods; insofar as they would imply a prejudice to the supreme authority of the Apostolic See, and to common law. V. Therefore, since the memorable custom contrary to this has not been definitively established, and since it only began in the year 1824, the Sacred Office, revoking the previous judgment, which was based on particular circumstances,

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recognized the right of the sodality. DECREE. On the second day of the week, April 3, 1882, the Most Eminent and Reverend Congregation of Cardinals of the Holy Roman Church, appointed by the Most Holy Lord Pope Leo XIII and the Holy Apostolic See to oversee the Index of books of false doctrine, and their condemnation, proscription, expurgation, and permission throughout the Christian Republic, having met in the Vatican Apostolic Palace on April 3, 1882, condemned and condemns, proscribes and proscribes, and orders that the following works be referred to the Index of Prohibited Books:

CHAILLOT, J. L. — *Pie VII et les Jésuites d'après des documents inédits*, Rome, Imprimerie Salvinoci, 1879.

RENAN, ERNEST. — *Marc-Aurèle et la fin du monde antique*, Paris, Calman Lévy éditeur, 1882.

G. D. M. *Vita di Martin Lutero*. Rome, libreria di Alessandro Manzoni, 1882.

[*Latin ed. p. 479*]

DECREE 479. SICILIANI, PIETRO, Professor of Philosophy at the Royal University of Bologna. On the renewal of positive philosophy in Italy. Volume unique. Florence, 1871. — Criticism in the zoological philosophy of the 19th century, dialogues. Naples, 1876. — Socialism, Darwinism, modern sociology. Second edition, enlarged with a new work — Contemporary issues. Bologna, 1879. — Prolegomena to modern psychogeny. Translated from Italian by A. Herzen. Paris, 1880. — Social theories and socialism. A correspondence with Bonelli. Florence, 1880. — On modern psychogeny in service of biological, historical, and social studies. Third edition, enlarged with a portrait of the author and a preface by Jules Soury. Bologna, 1882.

COSCIA, NICOLA. A thousand of the most original and ingenious popular songs: serenades, stornelli, strambotti, and rispetti that are customarily exchanged between lovers in the Italian countryside during challenges, vigils, and dances, selected and presented for the common understanding. Rome, Adolfo Paolini Printing House, 1882.

Decree of the Most Holy Office, February 1882. The author commendably submitted himself and repudiated the work. Therefore, no one of any rank or condition may dare to publish, or to read or retain, the aforementioned works in any place and in any language, but rather they must be handed over to the Ordinary of the place, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books.

These matters, having been related to the MOST HOLY LORD OUR POPE LEO XIII by me, the undersigned, S. I. C. from the Secret Archives, HIS HOLINESS approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome on the 3rd of April, 1882.

F. R. THOMAS M., CARDINAL MARTINELLI, Prefect.

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Fr. Hieronymus Pius Sacerdoti Ord. Praed. In place of the Seal.
S. Ind. Congregationis a Secretis.

[*Latin ed. p. 480*]

480 FROM THE CONGREGATION OF SACRED RITES IN SALFORD. To the Most Reverend Bishop of Salford, having inquired by this present communication from the Sacred Rites Congregation: Whether, without a special Apostolic indult, it is permissible to perform incense offerings in a Mass which is celebrated with singing, but without the presence of sacred ministers. The Sacred Rites Congregation, through the undersigned Secretary, responded: "No, according to other decrees." And so it responded and wrote. July 2, 1880. D. CARDINAL BARTOLINI, Prefect of the Sacred Rites Congregation. PLACIDUS RALLI, Secretary of the Sacred Rites Congregation. GENERAL DECREE. Due to a less correct interpretation of the Decree of the Sacred Rites Congregation, dated April 8, 1808, issued in Santiago de Compostela, in which it was declared that a Mass for the Dead could be said in the presence of a corpse, on days of the first class, even if not festive by command, except for the titular feast day, it has come to pass that in some churches, the practice of singing such Masses on the anniversary of the church's own dedication has become established, which, as the Feast of the Lord, and in honor of a titular feast of greater dignity, should never be postponed according to the decrees. Therefore, in order to remove all ambiguity, the same Sacred Rites Congregation deemed it opportune to declare, as it declares and prescribes in the present Decree, that nowhere is it permissible to sing a Mass for the Dead, even in the presence of a corpse, on the anniversary of the church's own dedication, as has always been observed in the Patriarchal Archbasilica of the Lateran and in other more important churches of the city. Notwithstanding the Decree of April 16, 1853, issued to the Order of the Friars Minor of the Observance concerning Question XX, in which such a Mass was permitted. And so it declared and commanded to be observed on February 27, 1882. Having been reported by the undersigned Secretary to His Holiness, our Lord Pope Leo XIII, His Holiness approved and confirmed the Decree of the Sacred Congregation. March 16, of the same year. D. CARDINAL BARTOLINI, Prefect of the Sacred Rites Congregation. PLACIDUS RALLI, Secretary of the Sacred Rites Congregation.

[*Latin ed. p. 481*]

4. IF APOSTOLIC LETTERS concerning the Order of Saint Basil the Great, reforming it in the Ruthenian nation in Galicz. LEO XIII, for the sake of future remembrance, has always considered the works of those men to bring a singular benefit and honor to the Catholic Church, who, desiring the perfection of Christian sanctity and service, having generously relinquished worldly affairs, devoted themselves to Jesus Christ. Although,

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at first, they lived in places remote from cities, enjoying greater freedom to serve God, and preferring the manner of life suitable to their age and the duties of the clergy, later, compelled by charity towards their neighbors and sometimes even by the authority of Bishops, they did not refuse to go to cities and to undertake the offices of the priesthood.

— Among these, that great man, Basil of Caesarea in Cappadocia, shone forth from the earliest centuries of the Church; a theologian and orator, incomparable with few, who not only strove for all the praises of virtue himself, but called many to imitate him: whom, instructed with the wisest precepts, he gathered into a common discipline of religious life in monasteries. These men, accustomed to voluntary penances and labor, devoted their time usefully to the study of divine praises and the doctrines of the sacred scriptures; and, having attained many things through these arts, above all, they achieved this: to strengthen the Christian cause and to illustrate it with their virtue, and, when necessary, to defend it with their works. Therefore, when that illustrious Order of religious men, the Photian, was destroyed by persecution, a not insignificant source of benefits was lost along with it. But when, after being received again into the Catholic Church, the Ruthenians revived this Order, and it was restored to its former dignity, with the consent of Saint Josaphat, the invincible Archbishop of Polotsk, and also a disciple of that Order, then the revived Ruthenian association quickly felt its benefit. For it was the chief aim of its members to preserve the connection of the Ruthenians with the Roman Church, to educate the people, in Aeta, Tom. XIV, fase. CLXVII, 31.

[*Latin ed. p. 482*]

482 Apostolic letters were composed to foster the education of youth, to administer parochial duties, and to fulfill all those offices which pertain to the cultivation of souls, especially if the number or zeal of the secular clergy had been deficient in certain times. For these reasons, they gained so much benevolence among all, so much esteem and grace, that one might almost read of them as if they were Basilians, who would become either Bishops or Archimandrites (1). At the Ruthenian provincial synod of Zamosc, which the Apostolic See confirmed with its decrees, it was stipulated that no one could be a Bishop unless he had professed the Basilian institute, and that no one could profess it unless, within the cloister of the monastery, he had spent a year of regular probation and six weeks devoted to the laws and customs of Saint Basil (2). Therefore, not only the Bishops of the Ruthenians, but also the Roman Pontiffs, Our predecessors, held the Basilian sodality in great esteem, praising it with their words and taking great care to promote it, for they knew that it had greatly benefited, and would continue to benefit, the Catholic Church, especially among the Ruthenians, and indeed had done so in the past and would do so in the future. It is well known how much Clement VIII (3) and Gregory XII (4) devoted to

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adorning the Basilians with their efforts and studies: whom even Benedict XIV (5) and, more recently, Pius VII (6) commended in special words. To these, in more recent times, was added the testimony of the Most Holy Pope Pius IX (7), consigned to them in Apostolic letters, in which solemn honors were bestowed upon the blessed Josaphat. But, the ancient connection of the monasteries having been broken, the Order, which had long flourished, has been weakened by various misfortunes, and has been afflicted not a little by the inconveniences of human weakness: and this especially in this age, when, amidst so much madness of opinions and corruption of morals, the Catholic doctrine is often held in disrepute. Furthermore, drawn away by the desire for new things to secular studies, the charity of many has diminished, and few are found who, having renounced earthly things, dedicate themselves to following the footsteps of Jesus Christ. — Meanwhile, those of us who grieve for the Order of the Basilians, and how it might be revived (1) Brief of Benedict XIV, dated April 12, 1753, *Inclytum quidem*. (2) Syn. Zamosc. Title VI, concerning Bishops. (3) Clement VIII, *Altissimi dispositione*, September 23, 1603. (4) Gregory XIII, *Benedictus Deus*, November 1, 1579. (5) Benedict XIV, *Inter plures*, May 2, 1744. *Inclytum*, April 12, 1753. *Super familiam*, March 30, 1756. (6) Pius VII, *Ea sunt Ordinis*, July 30, 1822. (7) Pius IX, *Splendidissimum Orientalis Ecclesiae*, June 29, 1867.

[*Latin ed. p. 483*]

APOSTOLIC LETTERS 483: "Considering that it is necessary for them to take this matter to heart, it has happened conveniently that not only We, the Bishops, but also members of the same Order have diligently taught about the state of affairs. Indeed, what Basil the Great, in distinguishing between the Eastern Churches, considered fitting to be done, they also deem it opportune to do, namely, to implore the aid of the Apostolic See, proposing, among other remedies, those which the blessed Josaphat wisely and usefully employed in a similar case. The common will of the Bishops and Monks has pleased Us, and the sorrow of Our heart, which was aroused on account of the Ruthenians, has begun to be alleviated; for whenever we think of them, we are grieved: for we cannot but lament the losses suffered by the Catholic faith, nor can we fail to fear the present dangers. But we judge it right to hope for the future, if, with God's help and under His auspices, that great Order of Monks may flourish completely, by which, when it existed, the Church of the Ruthenians prospered. It must be like an ancient tree, whose root is holy; from which, it is permissible to expect joyful and abundant fruits of new shoots: and this all the more, because cultivators are sought, who, in the same work, are diligent, namely, members of the Society of Jesus, whom the blessed Josaphat himself and Metropolitan Velaminus Rutski experienced as the best of helpers. Therefore, concerning this grave matter, which rightly claims Our special attention, We have

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ordered several of Our Venerable Brothers, Cardinals of the Holy Roman Church, to deliberate maturely in the sacred Council for the propagation of the Christian faith, which is dedicated to Eastern affairs. When they have approved, We, with Our Apostolic authority, decree and command the following to be observed in order to restore the illustrious Order of St. Basil the Great in Ruthenia, so that its members may be properly trained for the priestly duties and diligently strive to care for the eternal salvation of their neighbors. And in this, We desire nothing more than that they should strive to imitate St. Josaphat, almost as if he were their second parent, and to approach the excellent charity of his example. For the sake of this, We decree that a College of Novices, or Novitiate, as it is called, be lawfully established in the Monastery of Dobromil, within the boundaries of the Diocese of Premisli: to which monastery, its temple and all its buildings, together with all its belongings, rights, and revenues, shall be ceded to the College of Novices. We command that monks of the Order of St. Basil in Galicz shall undertake their novitiate in the Monastery of Dobromil at the appointed time; if they do otherwise, their religious profession shall be declared invalid and void."

[*Latin ed. p. 484*]

484 APOSTOLIC LETTERS: For the sake of more securely and firmly attending to the needs of the Order, and to encourage more young men to embrace this most salutary way of life, we, for the same reason, renew or grant, through Apostolic Letters dated July 30, 1822, the privilege which Our Predecessor, Pius VII, had granted. Therefore, we confirm this Order, so that even Latins, who have not yet received Holy Orders, may be admitted. It is permissible for them to conform in all things to the Ruthenian rite before making their solemn profession; once that is completed, and not before, they are to be considered, truly and completely, to have passed over to the Ruthenian rite, with no return to the Latin rite permitted. Since the task of reforming this Order has many difficulties, which require the counsel and authority of the Apostolic See, therefore we reserve its governance to Ourselves and to Our successors, the Roman Pontiffs, entrusting its care to the Sacred Congregation for the Propagation of the Christian Faith, which is responsible for Eastern affairs, until otherwise determined by the Holy Apostolic See itself. We grant to the same Sacred Congregation the right and power to nominate, after due consultation with the monks, and to elect the Protopriest or Prefect of the Order in the Galicia Province. Therefore, we declare this Basilian sodality to be entirely exempt from the ordinary authority and jurisdiction of bishops and even of the Metropolitan of the Ruthenians; with the exception, however, of the power which the Council of Trent attributed to bishops in this matter, even as delegates of the Apostolic See. The College of Novices, which we have mentioned, following the example of the ancients, namely the Metropolitans

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St. Josaphat and Velamin Rutski, we entrust to the Society of Jesus to be established and governed, as long as there are no men from the Basilian Order itself, whom the Apostolic See deems fit to be entrusted with the care of the Dobromil Monastery. Therefore, we command that, as soon as possible, several priests from the Society of Jesus be chosen to take charge of the Dobromil Monastery and the Novitiate; these priests, however, must continue to remain, not only with regard to religious discipline, but also with regard to the change of office, under the authority of their ordinary superiors, as is now the case. The Protopriest of the Society of Jesus shall hand over the aforementioned monastery, which we have already freely offered, together with all its goods and revenues, to these priests, saving the Basilian's right of ownership; and a proper instrument of this transfer shall be drawn up. These priests of the Society of Jesus shall administer these goods and the fruits thereof for the benefit of the Monastery and its students, not under the authority of the Basilian monks, but under the authority of the Sacred Congregation for the Propagation of the Christian Faith.

[*Latin ed. p. 485*]

APOSTOLIC LETTERS 485: Each year, accounts of receipts and expenditures are to be submitted, along with a report on the status of the novices and those admitted among the novices who have demonstrated their faith. The Monastery of Dobromil, which we have, in the meantime, placed under the authority of a Protopriest, shall receive as many as declare their desire to be received into the Basilian Order from either the Ruthenian or Latin rite. However, they shall not be received unless they are found to be both virtuous and suitable, not only by legitimate testimony regarding their life and morals, and by letters from both the Ordinary of their origin and their domicile, but also by a certificate of six months' proven conduct and steadfast will, which they must present within the monastery walls before they receive their initial habit. The students or novices of Dobromil shall be instructed in all piety and religious perfection according to the discipline of the Basilian Order, as established by Saint Josaphat. Furthermore, in order that the approved customs of the Ruthenian rite may be inviolably observed, the superiors of the monastery shall take care and provide that, with the assistance of a Ruthenian priest, the divine offices be performed in the sacred edifice according to the Ruthenian rite, and that the Sacraments be administered according to the Ruthenian rite; also, that the students diligently learn the Ruthenian liturgy and ceremonies. These students shall be accustomed to performing divine praises properly; they shall observe the fasts and abstinences prescribed by Saint Josaphat; however, it is permissible for the Prefect of the monastery to temper these with prudence; and we wish to grant to him, and to those under his authority, the power to dispense from ecclesiastical precepts for just cause, and we grant to him

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all other faculties that the Apostolic See customarily grants to superiors of religious orders. The sacramental confessions of the students shall be received by their master, even two years after they have pronounced their simple vows, even if that same person also holds the office of prefect of the monastery; however, it must be so that they may, at any time they wish, have recourse to an extraordinary confessor. After a period of one year and six weeks, it is permissible for the students to pronounce their simple vows, provided that they are judged worthy and capable of fulfilling the duties of the superiors of their Order. Those who are judged to be unworthy or unsuitable shall, even if they are bound by vows, which are called devotional vows, be released by the Prefect of the monastery, and he shall order them to leave. It is not permissible to order those who have duly pronounced their simple vows to leave, except with the authority of the Apostolic See, unless an evident necessity arises that admits of no delay. After the simple vows, the students shall be instructed in the humanities by priests of the Society of Jesus; then, under the same doctors, they shall learn philosophy and theology, and in these studies they shall be trained in the discipline of Saint Thomas Aquinas.

[*Latin ed. p. 486*]

486 APOSTOLIC LETTERS. To those who, having completed the three years required by the simple vows, are permitted to solemnly profess the Basilian Order, observing the laws promulgated by Our Predecessor, Pope Pius IX, in particular the Constitution *Ad universalis Ecclesiae* issued on February 7, 1861. These matters We have indicated for consideration. In the meantime, diligent effort will be devoted to drafting rules of life, or Constitutions, which are more closely aligned with those established by Basil and Josaphat. We intend that these be examined and approved by Our authority and that of this Apostolic See. And through this means, We confidently expect that the Basilian society of Ruthenians in Galicz will revive, with the help of God, and, strengthened in all virtues, will readily achieve what its founder, Basil, and its restorer, Josaphat, had in mind: namely, to preserve the Catholic faith among others, to spread it to others, to maintain the ancient connection of their people with the Church of Rome, and to provide learned, industrious, and well-intentioned assistants to the Catholic Ruthenian bishops. But those who strive for the well-being of the Basilian family in Galicz are not the only ones whom Our charity embraces; it also includes other students residing outside of Galicz, who are certainly worthy of our equal care and benevolence, especially because of the benefits they bring to the Catholic Church, not only in part, but also in its entirety and in what is hoped for. Meanwhile, We are certain that they will not fail to strive with all their might to maintain the dignity of the Basilian Order, and that, with God's help, the desired union of all monasteries will be achieved. — Furthermore, We believe that the Venera-

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ble Ruthenian Bishops, who have greatly contributed to the Basilian society, will be pleased to know that We have not considered it necessary to burden them in this matter, but because, with things established by Our authority in this way, those good things that were desired by the common desire of all can rightly be expected from the Basilian Order. May the Virgin Mary, the Mother of God, together with the Archangel Michael, the heavenly patron of the Galicians, and Basil the Great and Saint Josaphat, grant a prosperous outcome to these endeavors, and may God grant that many from all walks of life may experience the benefits of this reform. These things We decree and command, declaring that anything attempted contrary to the foregoing, knowingly or unknowingly, shall be null and void. Despite any other provisions, even those of special and individual importance, which may be in force, they do not impede the foregoing.

[*Latin ed. p. 487*]

APOSTOLIC LETTERS 487, and to each and every one, for the sole purpose of these present matters, we derogate by the authority of the Holy See. We desire, however, that the faith in these present Letters, even those printed by type, subscribed by the hand of a public Notary and fortified with the seal of a person in ecclesiastical dignity, be entirely applied everywhere, in judgment and outside of it, just as it would be if they were exhibited or extended. Given in Rome, at St. Peter's, under the Fisherman's Ring, on the 12th of May, in the fifth year of Our Pontificate. LEO XIII, POPE. FROM THE HOLY CONGREGATION OF THE COUNCIL FOR DISPENSATIONS, August 6, 1881. SUMMARY OF FACTS. Maria, a most virtuous woman, born in the village of Lazieniec, in the Diocese of V., devoted to literary pursuits, and especially to poetry, entered the city of V. to sell, for the purpose of obtaining an autograph, certain poems of hers to a bookseller and publisher named Stanislaus. After this business was concluded, as is often the case, a certain affection arose between them, which they always cherished; and although the woman did not have a permanent residence in the city of V., the man, visiting her frequently, came to know her thoroughly. From these repeated visits, he became so enamored of her, especially because of her honorable conduct, that, seizing the opportunity, he asked her to marry him, believing that she would agree to his wishes. And he was not deceived, for the woman, gladly complying with the man's will, quickly gave him her hand; and although both were *frigida* [cold],

[*Latin ed. p. 488*]

488. Although the signs of love were present in the marriage, nevertheless, the marriage was considered invalid in 1876. However, it does not appear that both parties had the same understanding in entering into this marriage, for the man, having a correct understanding of this sacrament, gave his consent to a true and proper marriage with all its effects, as com-

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monly understood by Catholics. However, the woman does not seem to have felt the same way, for, as she herself said, she was led by a mistaken opinion, and entered into the union solely for the purpose of providing mutual assistance in the study of literature, and, as she confesses, she transferred no rights to her body to the man through marriage. Indeed, she stated that she entered into a purely literary marriage with him; that is, that she would not bear children, but would produce books. Nevertheless, on the evening of the day the marriage began, she went to the husband's house; where she stayed for six days, separated from her own mother in a room, and for two days without her mother. However, whenever the husband tried to show signs of love to his wife, the wife always rejected him, adding that she could never be or would ever be his or anyone else's wife; and she left his house. The man afterwards made every effort to reconcile with his wife and to live with her in marriage. But in vain: for no one was able to persuade her. In this situation, with all hope of reconciliation lost, he felt such aversion towards her that he decided to no longer live with her. When he felt himself exposed to the danger of incontinence, he presented a petition to the Sacred Congregation so that his marriage, being unconsummated, might be dissolved by a dispensation from the Holy See. The processual records were prepared by the Congregation according to the procedures of the Benedictine Constitution, and were sent to the Holy See in order to obtain a dispensation.

SYNOPTIC DISCUSSION

DEFENSE OF THE MAN. The advocate for the man divided his argument into two parts, demonstrating in the first part that there was no marriage.

[*Latin ed. p. 489*]

DISPENSATIONIS MATRIMONII 489: concerning impediments due to lack of consent; in the second case, it demonstrates that the dispensation should not be denied, not only because it concerns a marriage that is not consummated, but also because the reasons for obtaining the dispensation are pressing. Regarding the first point, having stated that marriage, according to both civil and canon law, is: "the union of a man and a woman, containing a common life, for the procreation of children," and that it cannot exist without the free consent of both the man and the woman, as stated in chapter 25 of the Decretal "De spons. et matrim." and as Lancellottus states in "Institutiones iuris canonici" lib. 2, tit. 11, § 1, concerning marriages; and as Ferraris states in "Bibliotheca" verb. Matrimon. Art. 1, n. 10 and 17, and as the Sacred Congregation of the Council in Romana, March 7, 1700, declared. In the matter at hand, it was proven that the consent of the woman was lacking, based on the deposition of the woman herself before

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the Consistory of the Court, in which these words are clearly stated: "At the moment of the marriage, just as before, I did not give my consent for a true marriage... When the priest asked me: 'Do you take her to be your wife, to have and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, to love and to cherish, until death do you part?' I repeated after the priest those words; but before each of those words, I added in a subdued voice: 'No.'" Not only does the confession of the woman, given under oath, demonstrate the lack of consent for entering into a true marriage, but also the facts that followed the celebration of the marriage confirm this. This is not only evident from the sworn testimony of the woman, but also from the examination of the witnesses, who all stated, almost in the same words, the same thing. The aversion that she felt towards Stanislaus was so great that, almost three years after the beginning of the marriage, she did not hesitate to assert before a delegated judge: "I cannot reconcile myself with my husband Stanislaus, nor can I live with him maritally, due to my insurmountable aversion and indignation." Therefore, the Metropolitan Theologian used these words in his vote: "It is clear that Maria was led by some unknown moral disturbance of the mind, and did not give her consent for a true marriage..."

[*Latin ed. p. 490*]

490 REGARDING THE DISPENSATION OF MARRIAGE: "He denied the validity of the marriage 'in the very act of its celebration.'" The Canonist argues, stating: "The validity of said marriage, as appears from the acts presented in this case, seems highly doubtful due to the lack of the required consent for a true marriage, in the Catholic sense, on the part of Mary; who, in entering into this union, not only did not intend, but completely excluded, the essential elements of marriage, and this (as she herself confesses) in the very act of the marriage celebration." However, even admitting this lack of consent, the defender argued that it does not preclude the possibility of a dispensation, first, because the marriage in this case was valid, but not consummated; and second, because just causes for granting the dispensation are not lacking. He seeks to prove the lack of consummation through the confession of the spouses, under oath; through the testimony of witnesses who heard the seventh marriage blessing; and finally, through an examination of the woman's body. Having made an examination of the woman's body, he observed that, according to the Constitution of Benedict XIV, she had been examined by two doctors, three midwives, before a matron, and that all of them, separately, having sworn an oath, declared that the structure of Mary's entire body, and especially the condition of her genital organs, was found to be in a state of perfect virginity. All of these things, taken together, the advocate argues, remove all doubt that the marriage was valid but not consummated; indeed, adding the examination of the woman's body, he contends that there is not only

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moral, but also physical certainty that her virginity was maintained in this matter. Regarding the causes for the dispensation, he states: "First among them is the eternal salvation of the spouses; Cosci, *De separ. mat.*, lib. 3, cap. 2, n. 99. Furthermore, he argues that, in this case, the eternal salvation of the spouses is imperiled, due to the danger of incontinence, beyond all doubt, given the young age of Stanislaus, and also from Mary's own confession. Mary's aversion towards the man she bore, which caused the man's aversion towards his wife, is another cause for the dispensation, according to Cosci, *De separ. mat.*, lib. 1, cap. 10.

[*Latin ed. p. 491*]

DISPENSATION OF MARRIAGE 491 ii. 256. To this aversion is added the obstinacy of the woman, who refuses to cooperate in the principal purpose of marriage, namely the procreation of offspring, and the accustomed life of the spouses. Another cause for dispensation exists in the consent of both spouses, which is elicited in order to obtain this dispensation; furthermore, that the consent of both spouses should be considered among the reasons for granting the dispensation is stated by Sánchez, book 2, dispute 16, number 3. DEFENSE OF THE SACRAMENT. He judged that it is not fitting to grant a dispensation in matters pertaining to the sacrament, because from the cohabitation, the right to use it is presumed, and this right arises from the consummation of the marriage. Thus, De Iusti, *de dispensat. matrimonii*, book 1, number 25; Pignatelli, *consultationes*, 149, number 1; and the Congregation in the *Commentaria Matrimonii*, December 17, 1768. Moreover, it is added, according to the unanimous opinion of the Doctors, that not only from a long cohabitation in the same house, but also from the delay of the betrothed in a secret and hidden place, and indeed for the space of one hour, provided that they are suitable for the aforementioned act, a presumption arises of the consummation of the marriage; Abb. in *disp.*, chapter 3 - From the convenience of one hour between the betrothal and the bride, a presumption of carnal conjunction arises. However, it is manifest from the acts, he says, that for two whole days and nights, the man and wife were alone together, and they slept together. From this cohabitation, a presumption arises of consummation, which is not dispelled unless by most conclusive proofs, as stated by Pignatelli, *consil.*, 149, number 21; Rota, volume 2, decision 54, number 8; and the aforementioned Congregation. Indeed, those things which are brought forward to exclude the consummation of the marriage are the oath of the spouses, the testimony of seven witnesses, and the inspection of virginity, which certainly cannot be considered as most conclusive proofs. Certainly, the assertion of the spouses has some weight only when it concerns impotence for intercourse, or of spouses who have never lived together, as stated by Consci, book 1, chapter 1, number 17, which Sánchez confirms.

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And much less weight is given to the testimony of seven witnesses.

[*Latin ed. p. 492*]

492. Regarding the dispensation from marriage, assistance from Chapters 5 and 9 concerning frigidity and male impotence was introduced, so that, joined with other aids, it might induce a moral conviction in the minds of those judging, in order to define the causes for marriage, in which the impotence of the spouses is discussed. The author states that this weak and insufficient proof, derived from the examination of virginity, is manifestly uncertain, as the signs of the same are uncertain in all of medical-legal science, citing the authority of Zacchiae, *Quaestiones medico-legales*, title 2, question 1, which states that no certain and inseparable signs of virginity are given. This is in accordance with the more recent writings of Barzellotti in *Medicina legale*, chapter 4, section 43. Furthermore, this argument becomes more valid if it is observed that the examination was made after approximately three years of cohabitation. Indeed, the diligent Defender argues that during this period of time, the female parts could have regained their natural cohesion, so that the woman would appear to be a virgin again. Moreover, in considering the causes for dispensation, he argues that the causes presented in the case are neither grave nor urgent; therefore, he asserts that dispensation should be entirely denied in this case. The first cause presented is the uncertain validity of the marriage itself, due to the lack of consent from the wife. But this is asserted by the woman herself, and this assertion is not sufficient to effect the dissolution of the marriage, according to Berardi, *Dissertatio 7 de dissociatione coniugum*, chapter 1. Nor can anything be inferred from the woman's repugnance to the act of copulation; for it is known that many women have experienced the same repugnance. Furthermore, the mutual consent of the spouses is considered to be of little value for the dispensation. For then the dispensation from marriage would be placed in the power of the spouses, which is a manifest absurdity, as anyone can see. Therefore, Sánchez, in *Disp. XVI, n. 9*, citing the authority of Barbosa, holds that the mutual consent of the spouses is not a sufficient cause for dissolution. Nor, he adds, is anything different to be said regarding the other cause of aversion that arose between the spouses, unless...

[*Latin ed. p. 493*]

DISPENSATIONIS MATRIMONII 49. Concerning the most serious consequence of a marriage forcibly contracted, a probable conjecture is to be held, as Sánchez states, Dist. 16, no. 4. Having briefly explained these matters, the following question was to be resolved: Whether, in the case of a marriage, the true consent of one party is to be considered for the granting of a dispensation, even if that consent was not freely given.

RESOLUTION. After careful consideration, the Sacred Congregation, on

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August 6, 1881, decided to respond: Affirmative.

FROM WHICH THESE CONCLUSIONS ARE DERIVED:

I. The nature and essence of marriage are such that it constitutes a perpetual bond of love and a union of souls; and that the contracting parties give themselves to each other: which cannot be done without the true consent of both, through which, above all, the marriage is perfected.

II. Therefore, there is no marriage, if one of the contracting parties, through his own malice, has merely pretended to consent and contract, but has not truly and inwardly consented: because it is not the external words or their sound, but the mind and will to obligate oneself, that effect the marriage. (Cap. Tua nobis 20 de spons.)

III. The party who does not truly consent, gravely sins, both by a sin of injustice in the contract, and by a sacrilegious sin in the sacrament. (1)

(1) However, the Church does not open a way to divorce and adultery, and affirms that it is not fitting to allege a pretended consent, as Innocent III states in chapter 10 de probat.: "When someone bitterly regrets his own wife, it is, according to the legitimate sanctions, presumed that he has consented, as if he had clearly declared with his voice and with signs, until it is evidently proven to the contrary in the same case, and that he can be a witness in his own favor, so as not to weaken the faith of the party." In the case under consideration, it is permissible to grant a dispensation.

[*Latin ed. p. 494*]

494. DISPENSATION FOR MARRIAGE I. Therefore, while the Apostolic See sought to provide for the eternal salvation of the contracting parties, in granting a dispensation concerning a marriage validly contracted but not consummated, it willed that the woman who, by thus giving her consent, offended the justice of the contract and the sanctity of the sacrament, should be severely chastised by penance. Regarding the investigation into the validity of the marriage due to the consent given by the girl, it was determined that, by consenting to the marriage, she did not grant the man any right in her body; but she sought assistance for her studies, being a devotee of the arts of literature. TO THE PARISH FOR COMPENSATION OF DAMAGES. August 6, 1881. SUMMARY OF THE FACTS. Although nothing certain can be determined concerning the statutes and privileges that the ancient Collegiate Church of Saint George once enjoyed; nevertheless, it is established with unquestionable certainty that, around the beginning of the 17th century, namely from the year 1617, its administration was entrusted to a lay society called the Estauritas, together with the College of Hebdomadariorum, over which a prior presided, and within which both habitual and actual pastoral care resided. However, as time passed, it became clear that things had changed, since an agreement was

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reached between the Abbot, the Hebdomadari, and the Estauritas on the one hand, and the newly established congregation of pious Operariorum on the other, which was subsequently solemnly confirmed by Pope Paul V through a Brief dated June 7, 1618, by virtue of which the Church of Saint George was perpetually ceded to the pious Operariorum. Nevertheless, while all rights were ceded, one was reserved, as is evident from the very Brief of Paul V: - there - "Let it be reserved."

[*Latin ed. p. 495*]

REINTEGRATION INTO THE PARISH 495 to the aforementioned College, the parochial right which it possesses today in the aforementioned Church." However, this right also ceased for the Hebdomadarii through the favor of the pious Congregation of Workers in the year 1621; provided, however, "that if the aforementioned Congregation should ever be extinguished or suppressed, the care of souls shall revert to the College of Hebdomadarii, in the same manner and form as it currently pertains to them." In the year 1689, the minds of the faithful were so agitated that a great question concerning the nullity of the cession was raised before the Most Holy Congregation of the Propaganda and the King; however, in the year 1704, it was dismissed with the response: nothing concerning reintegration. However, with the change in political government, during the dictatorial decade of the year 1861, the legal existence of all Collegiate Churches, to which the care of souls did not pertain, was abolished. Then, the ecclesiastical authority endeavored to ensure that the care of souls would pertain to the College of Hebdomadarii; and it obtained from the government a declaration, by which the Collegiate Church was recognized as a parish. The Pious Workers occasionally obtained from the government the sum of 7,000 livres, on account of the actual care of souls. Thanks to the aforementioned favorable declaration, the Hebdomadarii were able to remain unharmed from the general suppression of Churches, enacted in the year 1866 against Collegiate Churches. However, the Archdiocesan Curia advised the Hebdomadarii not to insist on the aforementioned favorable declaration, so that, while they themselves would recover the sum of 2,200 livres, the Pious Workers would lose the sum of 7,000 livres obtained on the basis of the parochial care of souls. But, since the Hebdomadarii had not obtained anything from the Pious Workers in compensation for damages and renunciation of the lawsuit, and having understood that, by virtue of the law suppressing the Regular Orders, not only the habitual care, but also the actual care, pertained to themselves, they supplicated that the Most Holy Council should decree that the Pious Workers relinquish the actual care of souls, or that they should give a portion of the revenues received to the orators for the parochial care. The Ordinary, consulted for information and a vote, reported an explicit reservation in the Bull of Gregory XV,

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concerning the care of souls.

[*Latin ed. p. 496*]

496. For the REINTEGRATION INTO THE PARISH, they ought to return to the Collegiate Church, so that the congregation of the pious Workers might be extinguished. This condition, he says, is not just, and because this Congregation, although suppressed by the Government, nevertheless lives before the Church, with its privileges. However, they consider it just that the pious Workers should provide some compensation to the Collegiate Church for the expenses incurred, amounting to 7,000 livres, which they obtained through the care of souls, which formerly belonged to the Collegiate Church. This compensation seems to be due to the aforementioned Collegiate Church because of the burdens that must be satisfied by the same, and in order to prevent the total ruin of this celebrated Collegiate Church, unjustly despoiled by the government. "Synoptic Disputation." DEFENSE OF THE PIOUS WORKERS. The Parish Priest, using explicit terms, with the force of which all the rights of the Hebdomadarii were ceded to the pious Workers, and citing the Bull of Gregory XV confirming the cession, stated: that the reintegration into the parish is entirely to be denied. Having stated these premises, he proceeded to say that nothing is more contrary to human faith than that which is contrary to agreements established by mutual consent. L. 1 ff. De Pactis. C. Iuris gentium §. Praetor ait ff. ibid. Cap. 1. And there, concerning obligations of pacts, it is written: "Agreements obtain their firmness; agreements must be observed." See also the Sacred Congregation in Vigilien. Inhibitionis, August 14, 1880, §. Furthermore, the principle of *tralatitium* is cited, see Rota Decis. 252, n. 1, p. 1, *recent*. And rightly so: for what, once agreed upon, cannot afterward be disapproved; according to Reg. 21 de Reg. iur. in 6°; especially if a change of will occurs, it prejudices the other party, as is widely explained in Fulginati. Reintegrationis, February 15, 1879, §. In addition to the aforementioned agreement, the *res judicata* of the year 1704, as mentioned above, also opposes the claims of the Hebdomadarii. For, the Parish Priest adds, if there can be no doubt about the existence of a *res judicata*, it follows that the Hebdomadarii must be rejected because they are not rightful claimants. For the judgment which has passed into the realm of *res judicata* cannot be overturned by the discovery of a new pretext.

[*Latin ed. p. 497*]

Regarding the reintegration into the parish, it can be treated under the law concerning judicial matters, the laws of the Emperors, and the law under the pretext of the Code concerning transfers. The law concerning the treasurer (§) states: "But when it is a question of transferring a chapter from a monastery concerning judicial matters, the matter to be judged is considered an exception from the final judgment and is held to be true, as

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Tradition teaches, St. Charles Borromeo in the Bononiensis Interpretations, Rescript of May 14, 1881, §. On the other hand, any proof to the contrary is rejected, as the Sacred Rota has decided in Decree 60, number 6, page 6, and in Decree 266, number 11, page 15, recently, especially, as it occurs in the present case, if the observance is strengthened by more than a centenaria. It would be incorrect to say that it is only the pious workers who have the habitual care; for in the instrument of cession, clauses have been added, so that it appears that all rights have been granted to the pious workers, with all rights by whatever title; then, from the clearest words of the Gregorian Bull, in which, without any distinction, it is warned that the care of souls remains absolutely with the aforementioned priests. This is even more to be admitted in the case in which the care of souls is exercised by a Vicar, not by the hebdomadarii, but by the congregation of the pious workers themselves. Indeed, that the habitual care rests with him to whom, when the parish is vacant, the right belongs to appoint an economist or a Vicar, to be approved by the Ordinary, is stated by Innocent in chapter with the words "cum non ignores," number 2, concerning prebends. Pignatelli, in Consultation 24, number 3, volume 1, Scarfant, in Lucubrations, Canon Law, book 3, number 28, and the Sacred Rota teaches in Decree 400, number 2, part 1, volume 1, recently. To this is added St. Charles Borromeo in the Brixien, concerning the Chapter's Rights, of June 26, 1880, §. But every doubt is removed. It is indeed the case that the hebdomadarii appeal to the Italian law, concerning the suppression of religious orders, which has oppressed the pious workers, as is shown by the condition in the cession of the parish, which was added in accordance with the Bull of Gregory XV, in which the aforementioned Pope had warned that the care of souls should be restored to the hebdomadarii. To this assertion, the parish priest responds: that the aforementioned Pope did not speak of any suppression, but of that which was legitimate, according to the Acta, Volume XIV, page 32.

[*Latin ed. p. 498*]

498. It sometimes happens that the restoration to the parish is authorized by a judicial decree. Therefore, in the case of Religious Orders, when secular authority overthrows, and the ecclesiastical authority approves and condemns, it has been prescribed that such action should be declared null and void, as Baldus states in *Morgar. ad Innocent., loco repertor. in verbo Civitas*. Lotterius, in his work *De Re Beneficiorum*, book 1, question 14, number 107, and Piton, in his *Disputationes Ecclesiasticae*, 8, number 17, concur. Furthermore, the same author states: "No compensation for damages should be granted to tenants." This is certain in law, because no one can be subjected to an action for damages unless it is proven that actual damage has been incurred, caused by deceit or fault, as is stated in the final chapter concerning injuries and damages: "If damage or injury has been

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caused by your fault, or if, although caused by others, it has resulted from your negligence or lack of skill, you must provide satisfaction for it." This is in accordance with text 1 of the canons under the law of Aquilius, and with the just law; furthermore, because it is the duty of everyone to act so as not to harm others, as stated in the canons concerning the law; and finally, because the one who suffers damage without any fault of his own is more deserving of compensation than the one who has caused damage through his own fault, as Reiffenstiel states in his *Liber V Decretorum*, title 36, heading t., section 2, number 39, concerning damages. The Holy Rota also agrees, especially in the decree issued in Nursina concerning the amendment of damages, on March 29, 1852, number 1, before Mertel: "The primary requirement for claiming damages is that the plaintiff must clearly demonstrate the loss and profit that he claims to have suffered, and furthermore, that this loss is derived from the action for which he seeks compensation," as stated in the canons, in *Si Servus* and in the canons concerning evictions, and in *Si Quis Damna*, as well as in the decree of the Rota, number 13 and following, in the title concerning credit claims, in the decree of Falconerio, concerning damages in Rome, on June 17, 1757, section 2, before Elephantutio, in the decree of Faventina concerning the transaction of execution for damages, on July 3, 1668, section 2, before Mannelli, in the decree, number 13, number 9, and in the decree, number 29, number 1, before Mark. Having established these principles in law, the Parish Priest of the Pious Workers first attempted to demonstrate that the tenants had suffered almost no damage; they had only lost 24 ducats.

[*Latin ed. p. 499*]

REINTEGRATION INTO THE PARISH: A tax of 499 has been imposed. Then he added: even if the same individuals have suffered a significant loss during the week, no compensation is due to them, since this occurred without any fault of the workers. Indeed, it seems safe to assert that pious workers, striving to demonstrate their concern for the souls entrusted to them, and having exercised their rights, have not harmed anyone, as is stated in the laws *Proculus* and *Fluminum* at the end, concerning damages incurred. Furthermore, it is well known that if something has been done or omitted according to the law, and even if a detriment results to another, there is no cause for complaint of damages, because no one is understood to have caused damage unless he does what he has no right to do. *L. 141 ff. de Reg. iur.* The Sacred Rota decided in case *Chorum agit s. Rota decis. 36 num. 2 et 3 cor. Malvasia*; the Sacred Congregation of Councils, in the matter of *s. Dionysii seu Reunionis - Translationis - Suspensionis* on December 11, 1880, §. ult. Having these premises, the following doubts were to be resolved: Is there a greater reason for reintegration in favor of the weekly workers into the Parish, in the case of St. George, through prayer and supplication? And, conversely, is it to be

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rejected in this case? After considering the matter, the Sacred Congregation of Councils, informed of the case, decided on August 6, 1881, to respond as follows: RESOLUTION. I. Negative. II. Negative. And furthermore, for all those who gather [here], and furthermore. I. That once something has been approved, it cannot be disapproved again, according to rule 21 of the rules of law, in 6: therefore, agreements and pacts entered into have their firmness and must be observed; especially if a change of will would prejudice the other party. II. The judgment that has passed into a final judgment, while it cannot be retracted in any way, is considered true, and rejects all proof to the contrary.

[*Latin ed. p. 500*]

§00 CONCERNING REINTEGRATION INTO THE PARISH: Three things are required; so that he who wishes to act may be justly repelled. III. By law, the habitual care of souls resides with him to whom, when the parish is vacant, the right belongs to appoint an economist or vicar, with the approval of the Ordinary. V. Religious Orders, suppressed by civil authority, are to be considered to exist by law, and are to retain all their privileges, as the ecclesiastical authority disapproves. VI. However, he who seeks compensation for damages must first prove that he has suffered a certain, demonstrable, and profitable loss; furthermore, he must prove that the loss derives from the action of the person from whom he seeks compensation. VII. In the matter of the cession of the parish in favor of the Pious Workers, it has been fully completed and legally established; so that the habitual and actual care remains with those same individuals who, although still living under material oppression, are legally protected and enjoy their customary privileges; and who are not obligated to provide compensation for damages, because they have inflicted no injury upon anyone by claiming the care of souls before the civil tribunals.

Regarding the PRIVATION OF THE PARISH: On September 10, 488.

COMPENDIUM OF THE FACTS. The Archbishop, M., learned from public reports that Philip, the Archpriest of the town of F., was leading an immoral life with a female servant. Upon a secret investigation, it was discovered, alas! that Philip was publicly called the father of some of the servant's children. Even though the matter had proceeded in this way, he nevertheless performed the duties of a father.

[*Latin ed. p. 501*]

The parish priest, in order to restore Philip to a good life, attempted to persuade him. These efforts proved fruitless, and as the scandal grew daily, he set a deadline for the woman to leave, imposing an indefinite suspension from the exercise of his office and the administration of the parish. The archpriest obeyed, and dismissed the woman and her children; however, in October, under the pretext of the grape harvest, the woman returned

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to his property; and the archpriest not only visited her, but took her back into his house. When the archbishop learned of this, and that the archpriest was continuing this scandalous behavior, on November 29, 1879, he issued a decree of suspension. Immediately, Philip appealed to the Sacred Congregation of the Council. However, the appeal was unsuccessful: for the Sacred Congregation, after hearing the report and information from the archbishop, and after carefully considering the arguments presented, on May 1, 1880, decided to confirm the archbishop's decree: "The decree of the archbishop of November 29, 1879, is to be confirmed. This should be notified to the aforementioned archbishop, who, having ascertained the persistence of the parish priest in his wickedness, should proceed further, according to the form prescribed by the Council of Trent, in Session 21, Chapter 6, concerning the reformation of ecclesiastical matters." This rescript was notified to the archpriest by the archbishop on June 4, 1880, and he appeared to repent: he dismissed the woman and her children again, and she established her home in the city of M. A few months later, and precisely in the following month of October, the woman, again under the pretext of the grape harvest, went to the town of F. with her children, and lived with the archpriest. Then the archbishop saw that Philip was persevering in this scandalous behavior; therefore, in accordance with the prescriptions of the Sacred Congregation, he took steps to initiate a canonical process. After this process was duly completed, on February 18, 1881, he issued the following sentence: "We... exercising the power with which we are endowed, and as, according to the decree of the Sacred Council of Trent, cited above, we act as delegates of the Apostolic See, we hereby deprive the priest Philip, the archpriest, and curator of the aforementioned parish, of all future rights..."

[*Latin ed. p. 502*]

802. THE PARISH IS DEPRIVED > having been deprived of its title (1) according to the procedures established by the sacred Canons and by the aforementioned Tridentine Council, we declare. Having notified the Archpriest of this in the customary manner, he interposed an appeal, deeming the sentence unjust and requesting that it be declared of no value. Synopsis of the Dispute. DEFENSE OF THE PAROCHIAN. The Parochian appeals the sentence on two grounds, both extrinsic and intrinsic; for he maintains that the sentence is null, firstly because the prescribed formalities in the process were not observed in the slightest; and secondly because there was no sufficient reason for rendering such a harsh judgment. Beginning with the first ground, he states that Chapter 2, question 8 of the Accusator's Code was violated, in which it is established that the accuser must sign the written accusation, so that the accused may raise objections against the accuser. In this case, he asserts that everything was done secretly; the accusation was indeed made, but who the accuser was, and what his qualifications

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were, were entirely omitted, so that he was unable to present his objections in any way. Furthermore, according to the provisions of both jurisdictions, witnesses must be produced in judgments, as stated in Chapter 2 of the Authentic Testaments, § and page 7, col. 7, who must be questioned and examined in the presence of the accused, according to law 15 of the Code of Testaments, which must also be observed in criminal proceedings, as is clearly indicated by the words of the Tridentine Council, in accordance with the institutions of the sacred Canons; and he complains that all of these things, which lead to the proper administration of justice, were disregarded by the Vicarius foraneus, who dismissed all the witnesses.

(1) Elsewhere, we indicate how this phrase should be understood: "by any appellation removed." - By this clause, no reason for defense is taken away from the accused; but recourse is granted to the Holy See so that the condemnation may be amended, if it is unjust. But this kind of recourse has only a devolutive effect, not a suspensive one; therefore, the execution of the decree by the Bishop is not delayed; because the decree remains valid until it is annulled by the Apostolic See.

[*Latin ed. p. 503*]

PRIVATIONIS PAROECIAE 503 of life, although he himself had been cited. He continues, stating that this irregularity was not remedied, because afterwards, in the ecclesiastical court, witnesses were summoned, but they were not examined, but rather, the examination was presented to them to be signed, without them knowing what was contained therein. But he strives to undermine the judgment of the court, not only from an external point of view, but also from an internal one. Indeed, it cannot escape anyone in criminal judgments, in which the matter at hand is the imposition of a severe penalty, as is the case here, with the deprivation of a parish, that conclusive proof is required, and as Chapter 11 states concerning presumption, "the light of the midday sun makes it clearer." As Communis and Bota recently decided, p. 2, decision 179, n. 3, p. 4, decision II, n. 11, of the latest collection of laws concerning proof, so that, even with strong presumptions, no one should be condemned in criminal cases. Furthermore, it is a principle of both jurisprudence that a judge should not rely on private knowledge or extrajudicial information, but should judge according to the acts and evidence presented. See *Veritas De officio Praetoris* and *Canon si peccaverit*, cause 2, n. 1, and Migliorucci extensively proves this in his *Institutiones Canonicae*, Dissertation 1, on proofs. From this, he declares that nothing should be made of what the Archbishop presents, based on private information, concerning the scandalous relationship and cohabitation of the aforementioned individual with a female servant in the month of April of the previous year in the city of M., and he abstains from refuting them. Rather, he believes that emphasis should be placed on the fact of the cohabitation with the female servant in the town of F. in the month of

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October, in which all the proceedings are based, and he maintains that the asserted cohabitation is a pure lie and calumny, vehemently refuted by his accusers, and especially by the Vicarius foraneo. In order to cleanse himself from these stains, he brings forward two testimonies of good reputation, one almost signed by all the inhabitants of the town on July 2, 1880, in which his piety and religion are extolled; the other, from the first municipal council on October 26 of the same year, in which it is explicitly stated that the Archpriest had fulfilled his ministry with commendable zeal and dedication.

[*Latin ed. p. 504*]

0*04 THE DEPRIVATION OF THE PARISH, from which it results that the inhabitants of the town esteem and love him. Finally, he completely refuted the calumnious accusation with the testimony of four witnesses, who, under oath, testified; in October of 1880, the aforementioned servant had indeed requested lodging in the town of Oppido for the sake of the harvest; but she had resided in her own house, and had never requested lodging in the Archpriest's dwelling, just as the Archpriest had never visited the servant's house, throughout the entire harvest season. The witnesses, contrary to what was alleged, retracted their depositions, two of them declaring that they did not believe the accusation; one because he is the brother of the notary of the vicariate, and the other because he is a young man of very poor character. From all of these things, the Archpriest, considering that no one ought to be condemned unless he is either convicted or confesses, concludes that the sentence of the Archbishop against him, which he deems to be of no value, ought not to be maintained, both because the proper forms of justice were not observed, and because there is a lack of cause for which he was condemned.

DEFENSE OF THE ARCHBISHOP. The Archbishop, on the contrary, in his own defense, maintained that all proceedings were carried out according to the laws, and that they were not subject to any defect whatsoever. Having stated that the Archpriest deserved the deprivation of the parish for several reasons, namely, because he acquired church property without the apostolic approval; because he arbitrarily leased property for a period of nine years contrary to the canons; because he spent nothing in favor of his church, so that it lacked necessary furnishings, and the walls and altars were completely dilapidated; and this is all the more reprehensible because he collected revenues from several legacies and remained a debtor, while an indecent reputation spread about him, and he himself invested large sums in favor of the daughters of the aforementioned servant. Having stated these things, he proceeds to examine the matter. And first, he observes that after the decree of the Most Holy Congregation of May 1st, the Archpriest claimed that he had resided in the house of the servant in the town of M., as a certain delegate of the investigation testified, to whom the

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task had been entrusted of investigating this matter. This delegate testified that the Archpriest had always visited the servant's house, and even took her daughter with him, so that she might change the air.

[*Latin ed. p. 505*]

Regarding the parish of Privation, 505, it pertains to his cohabitation with that woman in October of 1880, which witnesses of the best reputation testified. The Archbishop, however, continues to make a matter of it, since four of these witnesses, in the house of the mayor, before many, retracted their testimony; for since the retraction was extrajudicial, it is to be held in no regard, and the testimony which they gave, having been emitted under oath, is to be held as true. Furthermore, they are poor, and can expect and fear much from the local syndic; hence, it would not be surprising if, before the archpriest and others favorable to him, they retracted what they had asserted. Finally, he says that the syndic himself and his brother have long been aware of the bad morals of the archpriest, but are now his friends, and defend him with all their might, because the archpriest is very powerful in the town, and did not allow that syndic to be appointed. Furthermore, with the consent of the archpriest, he freed certain lands from the tax which they owed to the Church, without obtaining any permission from ecclesiastical authority. As for the other two witnesses, first, the prelate noted that the archpriest accuses them of being reprobate, simply because they do not favor him; nor does the fact that one of them is the brother of the notary of the foreign court invalidate his testimony. On the contrary, the witnesses who were brought forward in favor of the archpriest are all suspect, and are heard very little; since they are all devoted to agriculture and are subject to the archpriest or his servants. Quite the contrary of what is asserted is true, namely that the process was conducted secretly: for, after a thorough investigation by the foreign vicar, and the records having been transmitted to the archiepiscopal court, everything was made clear to the defender, and he was given the opportunity to communicate with the archpriest; then, both in writing and verbally, the defender was allowed to speak, and everything else was done which the sacred canons require for the integrity of judgments. Nor does he attempt to prove anything with the testimony of the townspeople and the first citizens, which favors the archpriest, for how the syndic became his friend has already been said. Furthermore, he proves nothing, since he contains nothing about the archpriest's servant and her children.

[*Latin ed. p. 506*]

506. The parish of *Mutationis* denies that cohabitation took place during the month of October. However, it should be noted that, as testimony from the townspeople indicates, this occurred on July 2nd, namely, when the female servant left the town, and before the cohabitation, which took

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place the following October, was established with the Archpriest. And it should be carefully noted that none of those who signed this testimony went to the Curia to obtain a statement in favor of the Archpriest, perhaps because no one could have denied before the Judge what was public and notorious. With these things stated on both sides, the purpose is to determine whether the judgment of the Archdiocesan Curia of February 18, 1881, should be confirmed or overturned in this case.

RESOLUTION. The Sacred Congregation of the Council, having considered the matter, on September 10, 1881, decided that the following should be answered: The judgment should be confirmed, and furthermore.

FROM WHICH WE GATHER:

I. A penalty of deprivation of the benefice cannot be imposed unless the cause is grave, notorious, and the proper legal order is observed: as is gathered from canon *Inventum* 38, causes 16, question 7; in which it is said, concerning a priest who has obtained a church, that if he has rightfully obtained it, he will not lose it, except through his own grave fault, and before the Bishop, through canonical severity (1).

II. Therefore, before a judgment of deprivation, it must be established by full proof, either granting or denying: because one cannot proceed to an ordinary penalty unless it is against a legitimately confessed or convicted person, according to Cardinal *De Luca* on Benefices, discourse 75, paragraph 4.

(1) Authors often distinguish between concubinage that is hidden, notorious, and almost hidden, according to chapter 7 of the *Cohabitation, Clerics, and Women* canon. There is no question of hidden concubinage, which is left to the judgment of God. Notorious concubinage can be so in terms of both law and fact. Almost hidden concubinage is when it is not fully established about the acts of fornication, but these acts are reasonably presumed from valid indications. Almost hidden concubinage is the almost only practical case: because rarely are the acts of fornication fully proven, and it is included under the decree of the Council of Trent, Session 25, chapter 14.

[*Latin ed. p. 507*]

PRIVATIONIS PAROECIAE 507 I I I According to the Council of Trent, Session 25, chapter 14, clerics living in concubinage must first be warned, then suspended, and finally, if they do not repent, permanently removed from their benefices. (1) These prescriptions were observed with the utmost rigor, as can be seen from the following: for a priest, when suspicion of concubinage arises, is warned; when he follows this shameful practice, he is suspended; and when, after being warned and suspended, he perseveres in his wickedness, he is deprived of his parochial benefice. (3) This is also

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made clearer from Chapter 7, title 13, Hh. i: "To the Most Reverend Bernard Cleric, we have received a complaint that you have unjustly deprived the Church of We from its due. Since it does not befit your honor to deprive clerics under your jurisdiction of their benefices without a manifest cause and a reasonable one... we command that, if this is the case, you restore the aforementioned church with its revenues, which you have taken."

DISPENSATIONIS AB IRREGULARITATE

Through the Summary of Prayers of September 10, 1881

COMPENDIUM FACTI.

Francis B., having reached his eighteenth year, received the name of an ecclesiastical soldier, as he is enrolled as a student in the Diocesan Seminary. However, he is unable to fulfill this vow due to the absence of the primary phalanx of his left hand, which renders him irregular. Therefore, on May 16 of the current year, he presented a petition to the Most Reverend Prince, humbly requesting that, through the grace of a dispensation, his vow be benignly fulfilled. The Ordinary, after being consulted as is customary, and after hearing two ceremony masters, reported that the petitioner is sufficiently capable of performing all liturgical actions without causing public astonishment, and that he is endowed with good morals.

[*Latin ed. p. 508*]

A SYNOPTIC DISCUSSION ON THE DISPENSATION FROM IRREGULARITY. THE DISPENSATION SEEMS TO BE DENIABLE. It is not unknown that an irregularity arising from a defect of the body is introduced by the Holy Canons for two reasons: firstly, out of reverence for the Divine, should it happen that the sacred functions can be performed properly; and secondly, because of the people's admiration, which can arise from sacred ceremonies not being performed with due propriety, as is stated in chapter 1, 2, and 6 of the book "De Corpore Vitiato" and in chapter 5 of "De Clericis." Gonzalez, in his Commentary on the title "De Corpore Vitiato," chapter 2, number 7, states this. Therefore, if it seems that the orator cannot properly and completely perform the individual sacred functions, since the masters of ceremonies appointed by the Bishop report that he can sufficiently perform these actions, then it spontaneously follows that the dispensation requested by the orator should not be granted. And it can even be denied more readily in this case, since it is a question of promoting, not of promoting, to which, according to the rule, a dispensation is very rarely granted by the Holy Congregation, as can be seen in Pamplona, November 22, 1856, and in Padua, April 27, 1861, through Summaria precum. THE DISPENSATION SEEMS TO BE GRANTABLE. However, on the other hand, in favor of the orator, it should be noted that the defect

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of the finger, with which he suffers, is not so grave that the decrees of the Holy Canons, concerning defects of the body, cannot also be applied in this case. Indeed, the aforementioned decrees of the Holy Canons speak of those bodily defects which are so grave that they present an impediment to the performance of sacred rites and arouse admiration in the people. But in this case, it does not seem that either of these things can occur, according to the testimony of the masters of ceremonies. And there are not lacking examples of dispensations in similar, indeed in more difficult cases, granted by the Holy Congregation, as is evident from Camerano, January 20, 1821, in which a dispensation was granted to a cleric who had previously lost the tip of his left thumb, and who requested a dispensation to enter the Holy Orders.

[*Latin ed. p. 509*]

DISPENSATION FROM IRREGULARITY 509 could be granted, and the Mass could be celebrated with a golden or silver ring; also, from the Decrees of February 21, 1824, where the case of one lacking the index finger of the left hand was considered; and also from January 6, 1825, and Apuana [Pontremoli] of September 27, 1860, in which cases a cleric was entirely lacking the index finger of the left hand, and in the other, the orator, due to the burning of the middle, ring, and little fingers, was scarcely able to perform several ceremonies of the sacrifice. To all these are added the good morals of the orator and the benefit derived from his promotion to the order for the Church, as testified by the Ordinary. With these circumstances being as they are, it was left to the judgment of the Most Eminent and Reverend Fathers to decide whether the requested dispensation should be granted to the orator. RESOLUTION. The Sacred Congregation of the Council responded on September 10, 1881: "For the granting of this favor, it is left to the discretion and conscience of the Bishop, having given his word to that effect." RENUNCIATION. September 10, 1881. By summary petition. COMPENDIUM OF THE CASE. Infirmity of health, the lack of those things which are required for leading an honest life, and also the desire to complete his studies, were the reasons that led the parishioner Aemigdio to offer himself as a messenger to his parish. He also stated that he was prepared to serve as a messenger at his own expense, covering all costs incurred either for the rebuilding of the parochial house or for the restoration of the church, amounting to a sum of 2,000 livres. However, since the Bishop refused to accept his offer, he appealed to the Holy See. The Apostolic Prothonotary, having inquired and received the opinion of the Bishop, asked:

[*Latin ed. p. 510*]

S10. The parish of Renuntiation first presented, with grave and heartfelt sorrow, the fact that the parish priest, in the prime of his life, was now aban-

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doning the flock entrusted to him, at a time when the Lord's vineyard is in desperate need of laborers. Then he added: That Aemigdius had promised his predecessor, from whom he had received the faculty to go to Rome for studies, that he would never abandon the parish in the future. Therefore, the Prelate continues, he opposes this resignation from the parish, because it is motivated by trivial reasons. With this understanding, and with the Bishop's opinion, the Cardinal Prodatarius informed him: His Holiness had not deemed it appropriate to accept the resignation. However, after a few months, Aemigdius again requested that the resignation be accepted. At that time, the Most Holy Father referred the matter to the Sacred Congregation for consideration. A SYNOPSIS OF THE ARGUMENTS. It is certain in law that a just and canonical cause is required for anyone to be able to resign a benefice; but also that this resignation cannot be valid unless it is made before the Ordinary, that is, in his authority, as is clear from Canon 10, and from Canons 29, and 24 of the Council of Trent (Decree on Reform). Furthermore, as stated in the Decretal, lib. 1, title "De Renunciationibus," art. 2: "Debilitas corporis," that is, weakness of the body, whether due to infirmity or old age, is a reason for resignation. What is valid for others holding benefices should apply even more to parish priests: for the resignation of a parish is not permitted, except for very serious reasons, as testified by Parisio, lib. 5, q. 1, n. 2. "It is the common opinion of all Doctors that a cause is required in resignations." This cause must be present both from the side of the one resigning and from the side of the one accepting, and not only from the side of the one resigning, or from the side of the one accepting alone. The reasons from which someone can resign from a benefice, even a parish benefice, are six in number. But, setting aside those that are irrelevant to our case, with regard to bodily weakness, the following are found in the Decretal, lib. 1, title "De Renuntiat," art. 2: "Debilitas corporis," which proceeds either from infirmity, or from old age, and...

[*Latin ed. p. 511*]

811. "RENUNCIATIONIS PAROECIAE" – However, all [clergy] can [request dispensation], but only that one, through which an impotent [cleric] is restored to the ability to fulfill the pastoral office; for if, because of some bodily weakness, the office of service accepted could be abandoned, the Apostle would vainly boast of his infirmities, etc. All Doctors, adhering to this legal provision, declare with one voice that bodily weakness is truly and canonically a cause from which the right is granted to all who have accepted the burden of a parish to request dispensation. Given these legal precedents, since the fact consists of a medical attestation that the parish priest Aemigius suffers from a weak physical constitution and a natural predisposition to consumption, the dispensation requested by him should appear to be benignly received and approved by the Sacred Congregation.

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Regarding this matter, the physician concludes that this parish priest is obligated to actually send a notice to the parish, because in that place, all that is necessary for the care of his health is done. To this must be added the desire, which he expresses, to expand and improve himself in studies, especially canonical studies, the knowledge of which, unless accompanied by practice, proves to be of little benefit, if not almost useless. Furthermore, the petitioner, as has been said, renounces all expenses for the construction of the parish house, and for the restoration of the church, and all those things that pertain to the [church] accounts.

WHAT IS OBJECTED TO THE PETITIONER. But, on the other side, the Bishop presents several things, from which it seems that the reasons presented by the petitioner to the Sacred Congregation for obtaining the dispensation are not true. Indeed, with regard to the infirmity of health, which is the most important of the reasons presented, the Bishop states in his information: "I considered it necessary to inform you that the parish priest does not suffer from a weak physical constitution, which borders on consumption, due to a defect of his parents. In fact, his parents are still enjoying good health in their old age; and his brothers and sisters, who are firmly engaged in labor, also enjoy good health. Now, however, the petitioner, having overcome the illness by which a large part of the population was afflicted, rejoices in good health." From these things, it also follows, says the Bishop, that another cause of impotence to perform the duties of a parish priest does not exist.

[*Latin ed. p. 512*]

Regarding the petition for the relinquishment of the parish, due to a lack of resources necessary for a decent life. The petitioner, having been born into a family of farmers, was later received into the diocesan seminary, and his education was simple, rejecting all softness. The income from the parish benefice is sufficient for a life of decency; indeed, it is almost the same as that with which he was born, since the parish is not far from his family home. His family, being wealthy and living near the parish, increases the people's religious and frugal regard for the pastor. Furthermore, the Ordinary has already noted that the petitioner has been awarded a doctorate in sacred theology and in both canon and civil law, and that his desire to continue his studies does not constitute a legitimate reason to relinquish the parish. Moreover, not everything that the pastor has stated regarding expenses incurred is consistent with the truth, and there are funds remaining for the benefit of the church. Having considered both of these points, the Most Reverend Fathers judged it necessary to determine whether it would be advisable to grant the petitioner's request.

RESOLUTION. The Sacred Congregation, having been informed, on September 10, 1881, decided to respond: "Let it be read."

(1) Although there may be just causes for relinquishing a benefice,

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which are related to the benefit of the Church and one's own well-being, chapter 12 of the Decrees nevertheless states that a resignation is not perfected unless the authority of a legitimate superior is added. It is the duty of the superior to determine whether the presented cause is suitable, in which case he dissolves the bond by which the one who resigns is connected to his Church. Saint Pius V assigns the reasons for which a resignation may be accepted in the Constitution *Quanta Ecclesiae*, § 3, with these words: "Henceforth, bishops and others who have the power to accept resignations may admit only those who, either through old age, or infirmity of health, or some impediment or defect, or because they are subject to censures, or ecclesiastical punishments, are either unable or unworthy to serve the Church, or who have obtained one, or another, or several benefices, or who are being promoted to another office; or those who are about to enter religion or to contract marriage, if immediately after that they actually carry out what they have promised; or those who, because of serious enmities, cannot or do not dare to remain safely in the place of the benefice." None of these reasons appear to have been found in the present case, since the Most Reverend Fathers rejected the petition with the formula "Let it be read."

In accordance with the formula "Let it be read" of the Sacred Congregation, the matter is not to be considered resolved under the present circumstances. It often happens that, with a change in circumstances and repeated prayers, additional evidence and information from the Ordinary are added, which all require that the matter be presented again and resolved.

[*Latin ed. p. 513*]

513 FROM THE DECREE GENERAL of the HOLY CONGREGATION of the ROMAN and UNIVERSAL INQUISITION, of the fourth day of Feria, August 31, 1881, concerning the nuptial blessing. In the general Congregation of the Roman and Universal Inquisition, held before the Most Eminent and Most Reverend Cardinals, Inquisitors General for the matters of faith, after the opinion of the Most Reverend Consultors, the same Most Eminent and Most Reverend Cardinals decreed: The nuptial blessing, which is given in the Roman Missal in the Mass for the bridegroom and bride, must always be conferred in the marriages of Catholics, but within the celebration of the Mass, according to the rubrics, and outside of the feria (weekday), to all those spouses who have not obtained it when entering into marriage, for whatever reason; even if they request it after having lived in marriage for a long time, provided that the woman, if a widow, has not received the same blessing in other marriages. Furthermore, those same Catholic spouses who have not obtained the blessing of their marriage are to be encouraged to request it at the first opportunity. It must also be explained to them, especially if they are neophytes, or if they validly contracted marriage before their conversion from heresy, that the blessing pertains to the

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rite and solemnity of the marriage, and not to its substance and validity. Contrary decrees notwithstanding.

Vincentius Leo Sallua, Archbishop of Chalcedon,

General Commissary of the Roman and Universal Inquisition.

Juvenalis Pelami,

Notary of the Roman and Universal Inquisition.

(1) By order of the Most Reverend Commissary General, as in other cases, this decree is published.

Acts, Vol. XIV, page CLXVJJ.

[*Latin ed. p. 514*]

514 FROM THE SACRED CONGREGATION OF RITES, CONCERNING THE ENHANCEMENT OF THE CROSS. Days of March 15, 1881, and March 14, 1882. A SUMMARY OF FACTS. The citizens of Sulmona, since the thirteenth century, have adorned a church, dedicated to Mary, greeted by the Angel, with paintings and marble decorations. And thus, with their treasures and all their efforts, the citizens have embellished the house of the Mother of God, so that already in the same thirteenth century, a Cardinal Legate appointed suitable administrators, due to the abundance of revenues, derived from pious bequests and the support of alms, granted by the faithful who flocked to it and still flock to it. The Bishops frequently throughout the year are accustomed to perform sacred functions in this temple, where sermons are given during Advent and Lent; and it is suitable for a large number of the faithful of that city. And therefore, this temple, if not by right, at least in fact, can be called a cathedral church. And just as the ancient origin of this temple is, so too is the ancient existence of the ecclesiastical college, which is now constituted of eighteen chaplains, who, for the sake of honor, are called canons. These have their own rector, whom they acknowledge as the head of the collegiate body, and are governed by special statutes. This church is administered as a collegiate church; while the canons must daily attend the choir for the complete office and for the solemn Mass. Therefore, this clergy, in order to be distinguished from the other clergy of the city, was also adorned with insignia and ornaments from the year 1790. Furthermore, the Archbishop Reginus granted these external decorations, with Apostolic approval. Therefore, it was decreed that the Colle-

[*Latin ed. p. 515*]

SULMONA. 515. Hoc collegiata, propter suam antiquitatem, semper habuit praecedentiam super alia collegiata quae ibi existit. Principatus autem huius ecclesiae videtur consistere in hoc, ut eius clerus in omnibus processionibus et etiam in associationibus funerum habeat ius gestandi et portandi propriam crucem, secundum immemorabile consuetudinem. Haec consuetudo usque ad annum 1722 confirmata

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est per decretum Auditoris Camerae Apostolicae, a Pontifice delegato, per haec verba: « Definitive sententiamus, Ecclesiam 'Sanctissimae Annuntiationis' Sulmonis fuisse et esse in quieta et pacifica possessione erigendi crucem in quibuscumque processionibus de praecepto et solemnioribus, ac de consuetudine loci, atque etiam in associatione cadaverum, omnesque clericos, atque presbyteros cappellanos inserentes dictae Ecclesiae per se tantummodo sub dicta cruce procedere, exclusis quibuscumque aliis extraneis. » Quae sententia tamen praecipit ut, de consensu Rectoris et Gubernatorum, domus clerici externi invitari possint, servando gradum et ordinem Ecclesiae Annuntiationis, sub cuius cruce procedunt. Paucis ab hac sententia dilapsis annis, quidam pervicaces, nullo ducti iure, conati sunt huiusmodi ordinem intervertendi, aliasque innovationes contra antiquissimam consuetudinem introducendi. Sed clerus recurrens ad ipsum Auditorem Camerae Apostolicae, hic novatorum attentata poenis gravissimis coaegit, et prohibuit ne aliquid pararetur contra rem iudicatam. Ab hoc tempore usque ad nos, seu per centum et quadraginta annos, iugi constantique observantia, collegiata ss. Annuntiationis in funerum associationibus gesta crucem extulit. De qua consuetudine testimonium perhibent Canonici Cathedralis, Parochicivitatis aliique religione, nobilitate, publicisque muneribus viri commendabiles: qui omnes in aetate supra annum 54 constituti, se idem semper vidisse et ita accepisse testantur. Verumtamen contra huiusmodi factum, immemorabili...

[*Latin ed. p. 516*]

516 SULMONA. According to custom, the Parish Priest of the Church of the Most Holy Apostles Peter and Paul, and of Saint Sylvester, in the city of Sulmona, rose. Who, with the support of the Bishop, and in order to abolish the deplorable custom, obtained a favorable rescript from the Sacred Congregation of Rites, dated January 16, 1880, by which the clergy of the Church of the Annunciation were denied the right to carry the cross in funeral processions, distinct from that of the parish. The Bishop, adding to the reasons presented by the Parish Priest to obtain the favorable decree, stated that the Apostolic Delegate had not been competent to judge the matter concerning the Sacred Rites. The clergy of the Church of the Annunciation, struck by this unexpected decree, appealed to the Sacred Congregation, lest their rights and privileges, confirmed by the Holy See, be taken away from them.

A SYNOPTIC DISCUSSION: DEFENSE OF THE CLERGY OF THE CHURCH OF THE ANNUNCIATION.

Since the speaker has presented certain preliminary points regarding the state of the controversy, he proposes two things to be vindicated: namely, that the clergy of the Annunciation justly possess the right, according to an ancient custom, to carry the cross in funeral processions; and that this

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right should be observed, as demonstrated by examples in liturgical and ceremonial matters.

No one doubts that a long-standing custom possesses great efficacy, since the Holy Pontiff Honorius III, in chapter 9 concerning customs, ordered that customs should not be changed, since the use and practice of a custom for a long time is not a light authority. But an ancient custom is so replete with authority that, by its favor, every privilege, Apostolic approval, and every right derived from any privileged title is established; Smalzgrueber, *Ius Eccles., Univ. Par.*, 1, title 4, n. 31, question 5. "What is the force and effect of an ancient custom?" The ancient jurists, with Innocent, in chapter 13 concerning judgments, number 5, state that all things can be acquired by an ancient custom, "which can be acquired by a prince's privilege and indulgence."

[*Latin ed. p. 517*]

SULMONEN. 517 "They give evidence, because a custom, the origin of which is unknown, is equated with a privilege, and is held in place of a legitimate, established, and proven title; so that, once a custom has been conceded or proven by the lapse of time without end, a better title cannot be alleged; hence, a clause prohibiting or invalidating the custom is not included therein; as Layman observes, citing others, in *leg. ltr.* 4, n. 7. Not unlike this, Reiffenstuel writes in *lib. 2 Decret., tit. 4 de consuetud.*, § 8, n. 189. Indeed, this ancient custom of honoring the clergy of the Most Holy Annunciation not only still persists, but the Auditor of the Apostolic Camera, almost two centuries ago, established the basis for his decision in a pre-existing custom, the origin of which was unknown, saying: "according to the ancient and always observed custom." And the aforementioned Auditor ordered that the aforementioned decree be observed under severe penalties, and that the aforementioned most ancient custom be followed in all things. Hence, that judge adhered to this ancient custom, to which also 158 years bear witness, namely, the years that have elapsed since the year 1722; not to any *Bullae*, pact, or convention, which could be understood with a restrictive or distorted interpretation. This is a matter to be carefully considered, since the most ancient observance, with the agreement of all jurists and the practice of tribunals, claims for itself, above all, the right to prevail over all more special titles, and triumphs over all exceptions. And indeed, practical doctors and tribunals apply these and similar theoretical doctrines in such cases; as Cardinal De Luca writes in *de Benef.*, disc. 32, n. 2. These principles were applied by the Holy Rota in decisions 962 *cor.* and *Motines*, decision 230 *cor.*, n. 7, *ibidem*. Indeed, the sole ancient observance carries with it any better title, and also the supreme approval of the prince. The Sacred Congregation recognized the efficacy of immemorial custom in a case concerning a voice of Saint Severin, on August 14, 1824; in *Regien. Beneficii* of Genoa, 1861, and in Riganti in

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Reg. Cancel. 1.1., ad reg. 2%, n. 139.

[*Latin ed. p. 518*]

518. In the matter of Sulmone, the forensic qualities and conditions, necessary for complete proof, derived from the testimony of witnesses and public notoriety, are present. The witnesses, having reached the age of fifty-four years, or having heard from their elders, testify that they have never known of any action to the contrary, nor have they seen or heard of anything to the contrary. Weight is added to these testimonies by the deposition of six parish priests of Sulmone, who had an interest in defending their own rights; for these, under the bond of a solemn oath, testify that the clergy of the church of the Annunciation have always raised their own cross. The accumulation of proofs is completed by the judgment of the Auditor of the Chamber; who, making no mention of the beginning, based his decision on the most ancient custom, as evidenced by ancient documents. Therefore, if this is joined with the subsequent, unforgettable custom, the matter is judged in its very title, which is to be recognized as true, and it constitutes an exception to the principle of *res judicata* (a matter already judged); Pitonius, *Discip. eccles.*, 41, p. 4, no. 3. "That custom which is found to be established by a judicial decision, acquires the force of law for the future; so that the absurdity seems to be, after so many centuries, to overturn the validity of ancient constitutions." It would be a matter not only of absurdity, but of the greatest injustice, if the clergy of the church of the Annunciation, supported by the unforgettable custom, were to be deprived of the peaceful possession of raising their own cross. It should be noted that among the liturgists, the rule regarding the use of a single cross admits of exceptions, which are confirmed by decisions and examples. And therefore, the authors who are versed in liturgical practice, and the *Sacramentarii*, adhere to the principles of common law in establishing and defending an ancient custom; especially in the case where the Ritual, in the title concerning the order of the *exequiae* (funeral rites), does not expressly state the use of a single cross, nor has added any positive prohibition. Hence, the generally prescribed rites are to be observed, but in addition, unforgettable customs are to be maintained: "However," says Baruffaldi in *ad Mit. rom.*, title 36, no. 1, "the custom of some places has force, which has great influence in matters of funerals." De Herdts, *Li-*.

[*Latin ed. p. 519*]

SULMONA. 549. The practice, as stated in *De consuetudine contra rubricas*, number 2, for supporting legitimate custom in matters concerning rubrics, notes that the decrees of the Holy See require an unforgettable custom; and also require that the custom not openly contradict the rubrics of the Missal, the Ceremonial of Bishops, the Roman Ritual, or even the general decrees contained in the Roman Missal and Breviary; and

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therefore, the Holy See has not invalidated the laudable customs of Churches. Hence, authors treating of these questions retain that particular statutes of Churches, having their own rites, do not necessarily abrogate general law and the provisions of the Ceremonial. Piton, *Disputationes*, 45, number 1. And Scarfi, *Lucubrationes canonicae*, volume 1, title 4, after stating that in matters of the Roman Ritual and Ceremonial, everything depends on observance, recalls number 15: "But if a custom were to contradict the provisions of the Roman Ceremonial, nevertheless, if it were an unforgettable, or centennial, custom, it would be to be observed, since by the same Ceremonial, the force of the unforgettable, or centennial, custom is not understood to be removed, but only customs of a shorter duration are protected." Pignatelli, *Consultationes*, 18, numbers 12 and 13. When an unforgettable observance is present, as the example shows, of several crosses being raised in the procession accompanying the body; Ferrari, *De Cruce*, number 17. Pignatelli, volume 6, *Consultationes*, 58, number 15, states: "Although a cathedral chapter may have a rule for itself, that when a funeral takes place, all should proceed under a single cross of the same kind; nevertheless, this does not apply in those places where there is a custom to the contrary, which is of long standing..." Therefore, in the duplication of crosses, the nerve of ecclesiastical discipline is not broken, nor should such a custom be considered a corruption. The Sacred Congregation admitted the duplication of crosses in Papia, regarding the precedence and the carrying of the cross, on August 14, 1880 (1). See also *Fastigium*, 1 (1), where you have similar questions on page 582, and volume 14, page 136; also recall what is related concerning Ischia, regarding rights and privileges, in note page 142 of the same document, from June 25, 1864.

[*Latin ed. p. 520*]

520 SULMONEN. The Holy Office, in its decision 545, concerning Troia, addressed the matter of rightful jurisdiction. The canons of the collegiate church sought to prevent the Regular clergy of that place from raising their own cross on any occasion when the Chapter intervened in the funeral processions. The matter having been brought before the Holy Office, it was decided that, "Although, according to the decrees of the Holy Congregations, in funeral processions all should proceed under only one cross of that church to which the body is being carried; and if the Chapter, or the Cathedral, or the collegiate church, is present, even if the body is being carried elsewhere, only the cross of the Chapter may be raised, under which all must proceed, nevertheless, the aforementioned [rule] does not apply when there is an ancient and established custom to the contrary." The ancient and established custom is upheld by the decrees of the Holy Congregation of Rites: "For, unless a specific mention is made of it, similar decrees shall not invalidate ancient customs." Therefore, the advocate

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concluded: "Since the custom, confirmed over the centuries, has been established by judgment, and attested by countless witnesses, the disposition of the ancient observance must prevail." Among those who should uphold the observance of this kind of right, neither the canonists nor the Auditor of the Apostolic Camera, who decreed in the name of the Pope, permit the clergy of the Most Holy Annunciation to maintain their peaceful possession of erecting their own cross in all processions by custom, and even in the association of bodies.

DEFENSE OF THE PARISH. Describing the character of the clergy of the Most Holy Annunciation, the advocate stated: "From the beginning, the lay administrators have exercised the right to appoint the Rector of the church, saving the right of the Bishop to institute him in office." Then, in the year 1689, an agreement was initiated, by which the right to approve and confirm chaplains, and to canonically institute the rector, was reserved to the Bishops for the time being. However, in the year 1752, all episcopal jurisdiction was rejected; so that the priests of this church were entirely removed from the jurisdiction of the Bishop. And all the chaplains are removable at the will of the administrators, without...

[*Latin ed. p. 521*]

SULMONA. §21 Without any intervention of ecclesiastical authority. In the present case, whoever of these chaplains, by oath, promises fidelity and obedience to the King of Italy, and also to observe the statutes and laws of the state, considering this as the end of the municipality, of the King, and of the Italian fatherland. Furthermore, these statutes, drawn up for the clergy, have been approved only by royal authority. Surely, no sane person would say, the defender argued, that this clergy constitutes a college, or an ecclesiastical community? Never have these priests, from the very foundation of the Church, constituted a collegiate Church, a recipient [church], or any other ecclesiastical community; so that they can only be considered as simple, mercenary presbyters serving the Hospice and the Church of the Annunciation. Therefore, these are those who cannot, in any way, claim ecclesiastical rights or privileges. It is not unknown to anyone that the parish priest, privately, with regard to the administration of the sacraments, the collection of offerings, funerals, and all acts and rights pertaining to the parish, has a foundation in law, not only within the parish church, but also throughout the entire territory of the parish; *Dilectus filius de Capel. Monach, cap. 2, concerning the duties of parish priests*. The common opinion of the doctors is that the parish priest should always precede everyone in the funeral procession; and all acts of jurisdiction are exercised privately by him, for the same occasion, whether in the house of the deceased, or on the road, or within the parish church; as decided by the Holy Congregation of Rites in Aversa on September 15, 1640, and as reported by Amortazo in *De causis piis*, book 6, chapter 2, number

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23, and by Cardinal De Luca in *Lib. de praem.*, discourse 21, number 5, Monacelli, title 13, formula 1, number 70. Regarding this matter, it pertains to the parish priest to carry the stole in the funeral procession, as a sign of his parochial office and jurisdiction, as stated in the *Rota* in *Nullius, seu montis Cassinen*, concerning the presentation of the stole, on June 22, 1714. § Merit of CorAnsaldo; Trident. Sess. 24, chapter 13, concerning those who are able to recognize [sacraments] and from whom it is licit to receive them.

[*Latin ed. p. 522*]

522 SULMONA. concerning etc. Therefore, since the office of the funeral and the administration of the sacraments are connected to each other and, by pastoral duty, are owed to the dying and the deceased; hence, this falls under the exclusive jurisdiction of the parish priest, and it pertains to him to perform the office of the funeral. But what is the law concerning the carrying of the cross in funeral processions? Can several crosses be raised? Certainly not: in funerals, only one cross must be carried, that of the Church to which the body is being taken; after which, those immediately belonging to that Church, its clergy, must follow, C. R., March 7, 1614, November 22, 1631; Ferraris, *v.* Crux; Pignatelli, vol. 8, consult. 83, n. 175. And therefore, even if the chapter of the cathedral church is assisting in the funeral in some parish, the parish priest, according to renowned Doctors, must precede it; because, when he performs an act pertaining to his own office, it matters not that another is of higher rank, Gratian, vol. 1, Disputation 106, n. £. Furthermore, the Roman Ritual itself prescribes that only one cross must be carried in funeral associations: "The parish priest, wearing the *superpelliceo* and a black or dark-colored *stola*, or even a *pluvialia* of that color, with a cleric carrying the Cross." Gardellini, n. 4, 4, 6, 8. In Alatri, it is noted that there are numerous decrees in the collection which order that only one cross of the burying Church must be raised in funerals. Furthermore, it can be argued that it is not within the right of the clergy of the Most Holy Annunciation to raise the cross in funeral associations, based on the very nature of that body. For that body does not form a collegiate church, a received church, or an ecclesiastical community: but, as has been said, they are mercenary priests, removable at will and entirely dependent on lay administrators. Since these presbyters do not form a collegiate body, the quality of an actor to whom judgment is applied is lacking, and their request must be rejected. However, if it is admitted that these presbyters may object to the decree from the Sacred Congregation of Rites of January 16, 1880, favoring the parish, they can draw arguments from fourteen sources, namely, from prescription, from custom, from privilege, or from...

[*Latin ed. p. 523*]

SULMONA. 52 3r, declaration of the Protonotary. However, no right can

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be claimed by the alleged cleric based on the aforementioned sources. Not by prescription; because parochial rights cannot be acquired by prescription. Besides the head of question 1, case 23, and nothing else encroaches upon the boundaries or rights of a parish, and this must be held even more strongly after the Constitution *Urba*, issued by Pope Pius VIII in Rome, in which it was stipulated that all things, whatever and however, pertaining to jurisdiction, immunity, and ecclesiastical liberty, which might be prejudicial, are not only to be declared null and void, but also cannot cause any prejudice whatsoever over the course of time; so that in the future, they cannot be alleged either in court or outside of court. Therefore, the prescription remains impeded by the very resistance of the law. Not by custom; because custom is established only by the community; whereas, in this matter, we are dealing with private individuals who are acting against the rights of the parish priests, against the common law, which is observed by all; therefore, no custom can be established in this matter. But, let us suppose, for the sake of argument, that a custom exists here: should it not be disregarded? Certainly not: Reiffenstuel, *lib. i, tit. 4, n. 59*, states: "A custom which contradicts sacred institutions, and introduces abuses contrary to the discipline of the Church, is not upheld." And if such a custom were to exist, it would have to be declared to be of no value, since it is contrary even to the decrees of Trent. Nor can the opponents find refuge in an ancient custom; because the proof of such a custom is difficult, since it is contrary to the common law; and because no ancient custom is admitted against the prescriptions of the Roman Ritual. This is also derived from the Council of Rome, held in the year 1725; in title 15, the Pope states: "Therefore, we strictly command that all things which have been found to be contrary in the churches... against the prescriptions of the Roman pontifical and the ceremonial of the bishops, or the rubrics of the missal, breviary, and ritual, be condemned as abuses and corruptions, and that they be completely removed, whatever opposition may be interposed, or whatever ancient custom may be alleged."

[*Latin ed. p. 524*]

524 SULMONEN. "According to custom." Furthermore, the most recent decree of the Sacred Congregation of Rites, Abellinen, no. 5352, is interpreted and demonstrates the Benedictine superiority. That no ancient custom exists is gathered from the confession of the opponents; because the custom of raising the cross arose from a privilege granted in the year 1722; and therefore, it is not ancient. Nor from a privilege: for a privilege, if it exists, must be shown and exhibited; and the opponents assert that they have a privilege, but in reality, they do not. No Apostolic letter, whether under seal or in the form of a Brief, exists which grants to the priests of the Most Holy Annunciation the faculty of raising the cross in funeral associations. And its date should be subsequent to the general law, enacted in the

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Roman Council in the year 1725, which expressly declared detestable the abuses and corruptions that had occurred contrary to the prescriptions of the ritual. Nor can the declaration of the Protonotary confer upon the opponents the right to raise the cross. The dispute arose between the chapter of the cathedral church and the opposing priests concerning precedence, or the right of going first in processions, both solemn and less solemn, or particular processions, according to local custom and usage... " And concerning these matters, the Protonotary declared that the church of the Most Holy Annunciation "is in quiet and peaceful possession of erecting the cross in all processions by order, and in solemn processions, and according to local custom, and also in funeral associations..." First of all, we observe that this concerns not the sentences of the Rota, or of other Sacred Congregations, issued in the name of the Pope, but the declaration of the Protonotary, whose authenticity may be doubted, because it has not been found in any place. We observe that it was issued in a dispute between the chapter and the opposing priests; now, however, the question is with the parish priests, who have a legal claim, and therefore demand that the rights granted to them by law be observed and protected. Furthermore, the Protonotary issued his declaration in...

[*Latin ed. p. 525*]

SULMONA. 525. This declaration of possession must be understood in a legal sense; for the Protonotary could not fail to know the prescriptions of the Roman Ritual, which Pope Paul V commanded to be observed inviolably, nor the resolutions of the Sacred Congregation of Rites. Therefore, this declaratory statement concerning possession should be understood in the sense that it pertains to priests who would form a liturgical procession, which would customarily carry the cross when departing from their own church to the Cathedral or to a parish, for the purpose of associating the bodies of the deceased, or after the association, would return to their own church. But he did not declare that he possessed the right to carry the cross, inasmuch as the church of the Most Holy Annunciation was a burial place. Therefore, it is understood that in the Protonotary's declaratory statement there is an implicit clause, that it pertains to those cases in which the rubric, the Ritual, by word, does not prohibit it. With these premises established, the purpose was to elucidate the following question: Does the clergy of the Church of the Most Holy Annunciation, located in Sulmona, have the right to carry the cross in funeral processions in the aforementioned case? ANSWER. The Sacred Congregation of Rites, after careful examination, on March 15, 1881, decreed as follows: Affirmative, and in accordance with the opinion. PROCEEDING OF THE CASE. The parish priest of the Church of Saints Peter the Apostle and Sylvester the Pope, considering himself aggrieved by the decree of the Sacred Congregation of Rites, filed an appeal with the same Congregation, seeking that the aforementioned judgment be

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reformed after newly presented evidence. Therefore, this case was again discussed under the formula of doubt: Should we adhere to or depart from the previous decisions? However, after considering the reasons presented, on March 14, 1882, the same Sacred Congregation of Rites judged: Adhere to the previous decisions, and furthermore.

[*Latin ed. p. 526*]

526 SULMONEN. From which [points] one may gather: I. That it is certain by law that in funerals, only one cross should be raised above the tomb of the Church, or that only the cross of that Church should be carried, to which the funeral procession is directed. II. Therefore, there are countless decrees of the Congregation of Rites, which prescribe that only one cross should be carried in funeral processions; but many of these decrees prescribe that venerable customs should be observed. (1). III. Often, in liturgical matters and sacred ceremonies, questions are not defined by common law, but by limitations, agreements, and observance; and the Decree of Urbis et Orbis, in which thirty-three doubts are resolved, added: "with the observance of venerable, or at least centennial, customs." IV. The Church of the Annunciation possesses the requisites by which, with the benevolent approval of the Apostolic See, it could legitimately be constituted a Collegiate Church; for its clergy form a college, or an ecclesiastical congregation, whose head, or rector, and the other priests are confirmed by approval, and therefore it constitutes an ecclesiastical college, capable of carrying the cross. V. Since the present question is a matter of fact, it must be resolved not with abstract theories, but with authentic documents, by which it can be demonstrated that the custom of carrying the cross, in favor of the clergy of the Church of the Annunciation, was venerable. VI. A venerable custom has that force that it supplies the just title, by which a better claim cannot be alleged; and it suffices for those things which are contrary to the law, and it has resistance against it; and because the clause of revocation, notwithstanding any [other clause], (1) The Roman Ritual, in the chapter on the Order of Exequies, states: "The parish priest, wearing a cope and a black stole, or even a pluvial of the same color, with a cleric carrying the cross, and another carrying the holy water, proceed to the house of the deceased, together with others." In this law established by the Ritual, no harsh clause is used, which silences the opposing party, and deprives the judge of the ability to judge otherwise. Moreover, the custom in question seems to be beyond the law, not directly contrary to the law: which does not prejudice the parish priest, nor the Church burying [the deceased].

[*Latin ed. p. 527*]

SULMONA. It is understood that a custom, if it is not of immemorial duration, is not considered a custom of immemorial standing. An immemorial

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custom possesses greater force than a mere apostolic privilege; for with the aid of the former, one can claim a better title; and although one may possess an immemorial custom, he may also claim a privilege; but one who does not possess a privilege cannot claim an immemorial custom. Furthermore, regarding the common law concerning funerals, it was once held that only the Cross of the Church, the burying church, was to be carried; however, this law can be modified by custom, as Cardinal De Luca stated: "The rule is that all should proceed under a single cross, unless custom dictates otherwise." (1)

(1) Benedict XIV, *Institutiones*, 105, n. 28, states: "Since, due to ancient custom in this city and diocese, it is observed to a very small extent that [only] the crosses of the sodalities or orders present at the funeral procession are carried, as Archbishop Cardinal Pallotti discovered, we expressly command that all and each, at the appointed hour, should assemble under their own banners and crosses, in the place where the deceased is to be, and can be buried; and this decree is to be observed even if the Chapter of the Metropolitan Church is present; therefore, for the sake of tradition, we do not wish to establish anything new, and we confirm the customs already introduced by our predecessors."

DECREE of Poitiers, concerning the beatification and canonization of the venerable servant of God, Andrew Hubert Pournet, priest, founder of the Congregation of the Daughters of the Cross, commonly known as the Sisters of St. Andrew.

Before the Most Reverend Lord Raphael Virili, appointed promoter of the cause of beatification and canonization of the aforementioned venerable servant of God, Andrew Hubert Fournet; and before Us and the Most Reverend Lord Cardinal Thomas Maria Martinelli, in the place and instead of the Eminent and Reverend Lord Cardinal Aloysius Billio, promoter of this cause, in the ordinary sessions of the Sacred Rites held today in the Vatican, the following question was proposed: Whether the opinion of the Delegated Judges, given by the Eminent and Reverend Lord Cardinal Bishop of Poitiers, regarding the lack of cult given to the aforementioned venerable servant of God...

[*Latin ed. p. 528*]

528 The Decree of God, or concerning the exemption from the decrees of His Holiness, Pope Urban VIII, must be confirmed in the case and to the effect of which we are speaking.

The Most Eminent and Most Reverend Fathers, Prefects charged with safeguarding the sacred rites, having carefully considered all matters, and having heard the voice and the written statement of the Reverend Father Doctor Lawrence Salvati, Promoter of the Holy Faith, judged it fitting to respond: "Affirmatively, that is to say, the sentence must be confirmed." On February 4, 1882.

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Subsequently, the aforementioned matters were faithfully reported to His Holiness, Pope Leo XIII, by the undersigned Secretary, and His Holiness deigned to ratify and confirm the response of the Sacred Congregation on the 9th of the same month and year.

D. CARDINAL BARTOLINIUS, Prefect of the Sacred Congregation.

(Seal)

Piae. Palli S. R. C.

Secretarius

The Decree of Valence, concerning the confirmation of the cult rendered to the Servant of God Bertrand de Tenca, a priest of the aforementioned Order, from time immemorial.

At the request of the Most Reverend Bishop of Valence, and of other sacred prelates, as well as the Reverend Father Father Vincent Ligiez, a priest of the aforementioned Order, and General Postulator of the causes of beatification and canonization of the Servants of God of the Order of Preachers, the Most Eminent and Most Reverend Lord Cardinal John Baptist Pitra, Bishop of Tusculum, presenting the aforementioned cause, in the ordinary assembly of the Congregation of Sacred Rites, convened this day at the Vatican, proposed the following question:

"Whether the sentence of the Delegate Judge appointed by the Most Reverend Bishop of Valence, concerning the cult rendered from time immemorial to the aforementioned Servant of God, or concerning the case excepted from the decrees of His Holiness, Pope Urban VIII, must be confirmed in the case and to the effect of which we are speaking?"

The Most Eminent and Most Reverend Fathers, Prefects charged with safeguarding the sacred rites, having carefully considered all matters, and having heard the voice and the written statement of the Reverend Father Doctor Lawrence Salvati, Promoter of the Holy Faith, judged it fitting to respond: "Affirmatively, that is to say, the sentence must be confirmed." On July 12, 1881.

These matters, having been faithfully reported to His Holiness, Pope Leo XIII, by the Most Reverend Lord Augustine Caprara, Assessor of the Congregation of Sacred Rites, His Holiness deigned to ratify and confirm the response of the Sacred Congregation on the 14th of the same month and year.

D. CARDINALIS BARTOLINIUS

S. R. C.

Prefect

(Seal)

Placidus Ralli

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S. R. C.
Secretarius

[*Latin ed. p. 529*]

329 APOSTOLIC LETTERS Concerning the Holy Sacrifice of the Mass to be celebrated daily on each festive day for the people by all Bishops of the Catholic world. LEO XIII, SERVUS SERVORUM DEI, for the perpetual remembrance of this matter. In the supreme care of Christian affairs, entrusted by God to the blessed Peter, the Prince of the Apostles, and to his successors, the Roman Pontiffs, it is necessary to diligently ensure that all ministers of the sacred rites, who care for souls, faithfully and accurately perform the duties of their office, from which the common good of the Church greatly depends. — Among these, the most sacred Sacrifice of the Mass stands out, which must be performed for the salvation of the people to whom each one is responsible, as the Fathers of Trent declared, deriving its power from divine precept (1). Therefore, so that no one may err in this matter, our Predecessor, Benedict XIV, in the Apostolic Letters published under the title "Cum semper oblatas," on the 19th of August, in the year 1744, decreed that all and each who, under any title, care for souls in any parish church, on each Sunday and other festive days, must not only celebrate the Sacrifice of the Mass, but also apply the fruit of that sacrifice for the benefit of the people entrusted to them; and that they may not apply it for others, nor may they receive alms for such application. — Although no mention of Bishops is explicitly made in these letters, it cannot be doubted that the most wise Pontiff, when he so gravely commanded the parish priests, intended, at least tacitly and indirectly, that the same should apply to the greater pastors of souls. This appears much more likely from the fact that his immediate successor, Clement XIII, in this same matter, in the same exposition (1) Sess. XXIV, cap. 1 de Reform. Acta, Tom. XIV. fol. CLXVIII. 34

[*Latin ed. p. 530*]

530 APOSTOLIC LETTERS have shown and declared. For, in the Encyclical Letters entitled "A quo die," dated September [17]th, 1758, after having said much concerning the performance of the episcopal office, He also added these words, speaking of Himself and of Venerable Brothers: "For we must not only care for our own infirmities, but also consider that the evils of others pertain to us, and that we must bear them as our own, and therefore, with greater and longer insistence, we must pray to the Lord, so that, as interpreters of the faithful, we may present to the Lord before all things, hope and charity for all the faithful, that whatever is necessary for all, and for each faithful, may be obtained from the Lord. And God will provide the way for us to pray, and will open up even the most august Sacrifice of the Eucharist. Therefore, even when most occupied with the

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duties of our office, we will not refuse to frequently offer to God the most holy Body and Blood of Jesus Christ, and we will consider that no task has been given to us that is more pleasing, than to frequently offer a propitiatory sacrifice for our sins and the sins of the people to God the Father." Our Predecessor spoke thus, no less wisely than piously.

However, He did not establish what days the Bishops ought to dedicate to prayer for the people; consequently, there arose disagreement among Catholic doctors, and even among the Bishops themselves, concerning the observance of these days. Since the Roman Congregations of Our time have not yet resolved this diversity of opinion, the same discipline has not been observed everywhere, but rather, different customs have prevailed in different places. Now, however, many Bishops, wishing to eliminate all cause for hesitation, have indicated that they desire and pray that the very days themselves be determined by the authority of the Apostolic See, by a law that all may observe in the future.

Therefore, since nothing is more important to Us than the public good of the Christians and the equal observance of sacred matters in all places, and since We also wish to satisfy Our Venerable Brothers, the Bishops, especially those who so earnestly request it, We deem it necessary to decide and judge this matter, to the extent of Our authority. In general, and universally, the episcopal office, of which We are speaking, is easily recognized as being in accordance with the sacred Scriptures, and as having been attested by the memory of past times. For from those places which provide the reasons and justifications why all pastors of souls ought to offer prayers and perform sacred duties for the people they govern, it is clearly evident that it is the same.

[*Latin ed. p. 531*]

APOSTOLIC EPISTLES 531: The office of Bishops: for Bishops are, in their pastoral office, the leaders. From the very beginning of the Church, the Apostles hastened to entrust the administration of external affairs, so that they might more readily devote themselves to prayer and the ministry of the word (1). And Paul wrote to the Colossians: "I cease not to give thanks for you, always in my prayers, and to beseech that the will of God may be fulfilled in you in all wisdom and spiritual understanding" (2). And to the Philippians: "I give thanks to my God in every remembrance of you, always in every prayer of mine for you all, with joy, making my supplication" (3). And in this supplication, in which Paul always remained, with joy and giving thanks to God, there is no doubt that he offered the Eucharistic Sacrifice, which is the most excellent form of prayer, and for which he especially testified that Christian priests were instituted. Every high priest, taken from among men, is constituted for men in things pertaining to God, that he may offer gifts and sacrifices for sins (4). Just as it is clear from these passages that Bishops ought frequently to perform the sacred

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rites for the salvation of the people, so it is easily understood how fitting, indeed how necessary, it is to do so on each feast day. For feast days are, in a certain way, dedicated to religion; and through them, accustomed to a cessation of labor, Christians are urged to devote more effort to those things which pertain to the cultivation and expiation of the soul; and especially to attend the most august Sacrifice, through which they offer due worship to the Creator and Governor of all things, God. Therefore, the sanctity of feast days seems to demand that Bishops, as custodians and leaders of the Church entrusted to them, offer the most holy Sacrifice of the Mass to God for the people; through which, as "interpreters of the faithful Church," they present before the Lord "the faith, hope, and charity of all," so that "all things, and whatever is necessary for each faithful person, may be obtained from the Lord." The ancient Bishops clearly saw the proper and beneficial nature of this discipline, and always exercised the office of sacrificing with the utmost reverence on feast days. Indeed, many monuments of ancient Christian practices confirm this; and it is worth remembering the testimony of St. Justin Martyr from his "Apology I" to Antoninus Pius (5): in which, after having clearly declared the consecration in the Eucharist...

(1) Acts VI, 4 and following.

(2) To Colossians I, 9.

(3) To Philippians I, 3-4.

(4) To Hebrews V, 1.

(5) In the edition of Maurin, page 83, note 61.

[*Latin ed. p. 532*]

532 The APOSTOLIC LETTERS describe how, in the Eucharistic Sacrifice, bread and wine are not taken by Christians as common food and drink, but as the flesh and blood of the incarnate Jesus Christ, as the Apostles handed down in their writings, which are called the Gospels. Soon after, they graphically describe the entire process by which the Catholic Church, from the beginning, has been accustomed to offer solemn worship to God the Most High through the oblation of this Eucharistic Sacrifice, even on the Lord's Day, which the Gentiles called the day of the sun. The ethnic Emperor, addressing these words: "For, as it is said, on this day, all cities and towns are filled with people," and the writings of the Apostles or the Prophets are read, as long as time permits. Then, when the reader has finished, he who presides offers an exhortation and encouragement to imitate such excellent things. Afterwards, all together we rise and offer prayers: and, as we have already said, when we cease to pray, the bread, wine, and water are brought forward, and he who presides offers prayers and thanksgivings with all his strength, and the people cry out, "Amen," and the distribution and communion of those things present is made to each person, and to those who are absent, it is sent by the Deacons. But

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that which St. Justin, with those words, indicates that he who presides, especially in this place, refers particularly to Bishops, is not doubted by those many prayers or homilies of the holy Fathers of the Church, which it is clear are recited during the solemnities of the Mass. Thus, St. Gregory says: "Because we are to celebrate the solemnities of the Mass three times today, we cannot speak for long about the evangelical reading." Indeed, in this matter, such a strict discipline was maintained, that if the Bishop had been absent from the assembly of Christians on a feast day, or if he had neglected to give a homily or to celebrate the divine sacrifice, all would be astonished (2) at the novelty and strangeness of the thing, just as they would be if, on days that are legally established, the court were empty, and the seats of the judges were vacant. But when the Bishop works on the sacred days, a common sacrifice is offered (3); and this appellation certainly means that it is customary for the Sacrifice to be offered in the presence of the people and for the people. "Another thing also is to be considered, which was the custom of the Roman Pontiffs: namely, that on Sundays, after the Sacrifice, they used to send something of consecrated things to the individual districts of the city, or to the curial temples, in which places..."

(1) Hom. VIII in Evang.

(2) St. John Chrysostom, Hom. I de incomprehensibili Dei natura.

(3) Concil. I Prov. Mechlinien. Tit. de Epis.

[*Latin ed. p. 533*]

APOSTOLIC LETTERS 533, along with the lower pastors of souls, were present, a multitude who could not be present before the Supreme Pontiff celebrating the sacrifice. That part of the sacred office which is commonly called the "ferment" is considered, for this reason, to be such, because just as a small amount of leaven binds and raises the entire mass of flour into which it is put, so that mystical "leaven" causes the entire people of Urban to coalesce into one body, so that each individual may feel united with the Supreme Pontiff in faith and charity, and may feel themselves participants in the sacrifice which He offers (1). Although today the custom has changed, and the sacred office is not performed daily before a multitude by the Bishop, it is nevertheless necessary to perform it for the people. Indeed, the Fathers of Trent, who repeat this office by divine command (2), when they subsequently (3) order the Bishops to see to it that all priests, or at least on Sundays and solemn feasts, "if they have care of souls, celebrate Mass as often as is necessary to fulfill their duty," they certainly tacitly warned them not to be absent from the just and proper office which is demanded by the lower pastors of souls. Therefore, in the Provincial Council of Milan I, in which the promulgation of the decrees of Trent was most prominently proposed, and in the presence of and with the votes of those very Bishops who had just returned to their sees from Trent (4), it was decreed: "Since, as

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the Apostle says, 'bishops are appointed by God to offer gifts and sacrifices for sins,' the Bishop shall celebrate Mass on Sundays and other feast days, unless he is lawfully hindered (5)." Therefore, it should not be surprising that the doctors of moral theology and of pontifical law are almost unanimously of the opinion that the office of celebrating Mass for the people pertains more properly to Bishops than to parish priests. Let the authority of St. Alphonsus de Liguori, Doctor of the Church, stand in place of all: "If, therefore, parish priests, and all to whom the care of souls has been entrusted, are bound on Sundays and feast days by command to celebrate and offer Mass for the people, much more are Bishops bound to do so, as the principal pastors of souls (6)."

(1) Cf. B. Ios. M. Thomasii Card. Opuse. VI in edit. Rom. Omnium Opp. Tom. VII pag. 51 seqq. Cf. etiam Augustini Orsi Card. Hist. Eccl. Lib. XXXI, n. 58.

(2) Sess. XXIII, De Reformat. c. 1.

(3) Ead. Sess. c. 14.

(4) Cf. Orationem a S. Carolo Borromeo habitam.

(b) Tit. de frequenti divini Sacrificii oblatione.

(6) Theol. Moral. Lib. VI. num. 326.

[*Latin ed. p. 534*]

534 APOSTOLIC LETTERS. The reason for this doctrine lies principally in the fact that, while Parish Priests are instituted with ecclesiastical authority, their office, by divine law, proceeds in a mediate and hypothetical manner. On the other hand, the pastoral office pertains immediately to the Bishops, since the Holy Spirit has placed them to govern the Church of God; it pertains also principally, because they possess a perfect and complete pastoral care, of which the Parish Priests exercise only a part, with the ecclesiastical authority granted to them. This, indeed, is eloquently expressed by St. Thomas with these words: "The Bishops principally have care for the sheep of their diocese; but the presbyters, as pastors, have certain ministrations under the Bishops, that is to say, according to what is entrusted to them by the Bishop" (1). Therefore, having considered all these things for a long time, and having heard the opinions of our Venerable Brothers, Cardinals of the Holy Roman Church, interpreters of the Council of Trent, we decree and declare that all Bishops, with whatever dignity, even Cardinalate, and also Abbots who possess quasi-episcopal jurisdiction over the clergy and people with a separate territory, are bound, on Sundays and other feast days, which are still observed by command, and on those days which have been added to the number of feast days by command, without any excuse of insufficiency of income or any other exception, to celebrate and offer the Mass for the benefit of the people entrusted to them. And so that no room for doubt may arise, we declare that these

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same Bishops and Abbots will adequately fulfill this office by celebrating and offering one Mass for the entire people entrusted to them, even if they equally and principally govern two or more dioceses and abbeys. We know that our Roman Congregations have decreed otherwise concerning Parish Priests who equally and principally govern two or more parish churches: in which case, it is necessary that in each church, on feast days, the Mass be celebrated and offered for the benefit of the people. But the case of Parish Priests is different from that of Bishops. Indeed, since to each Parish Priest is entrusted a special and defined care for a particular people, on feast days the Parish Priest must not only celebrate the Mass for the people, but must also admit the people into the parish church, so that they may participate in the holy sacrifice of the Mass, and hear the word of God, and receive the sacraments as appropriate, and be instructed in all those things which are to be provided, especially on Sundays and other feast days. But this cannot apply to Bishops, who are in a different condition and for a different reason.

(1) 2-2, q. 184, art. 6, ad 2 et 3. See also opus, XIX cap. i.

[*Latin ed. p. 535*]

APOSTOLIC LETTERS 535: Henceforth, it is commanded that on all festive days, the Holy Sacrifice be celebrated in the Cathedral church. Although it is by no means necessary, we deem it fitting to declare that what has been established above does not apply to Bishops who are called titulars, that is, those who have been promoted to the episcopal dignity, and who are adorned with the title by the Roman Pontiff, concerning the Cathedral churches, which, once flourishing, are now lacking to the Catholic clergy and people, lest the ancient dignity and memory of these churches be utterly erased. For since they do not possess the possession of their sees, but only, having accepted the office of which we have spoken, are obligated to fulfill it (1), and since neither the clergy nor the people are subject to their governance, it is evident that, just as they lack the use and exercise of the power received from their episcopal consecration, so too they are not subject to the duties and burdens of episcopal care. But nevertheless, if the reason of episcopal equity and charity is considered, it cannot but seem fitting that they, too, should sometimes offer sacrifice, so that God may regard the miserable condition of those churches, which they honor with their title and name. This is excellently expressed by our Predecessor, Pope Pius VI, in the consecration of the Bishop of Cyrene, on the 4th of October, 1778, in the Basilica of Ostia: for, when enumerating the reasons for which the Apostolic See sometimes confers churches even upon those occupied by infidels, "it is necessary," he said, "that someone exist to whom it is especially incumbent, if not to govern that miserable portion of the flock, at least to pour forth prayers and tears for it to the Father of mercies." We desire that these present Letters, and all things contained therein, be observed inviolably, and that no one shall ever be permitted to note, impugn,

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or call into question the intention of Our mind, or any other defect, or to be judged or defined otherwise concerning these matters; and whatever else may happen concerning these things, We declare it to be void and of no effect. Notwithstanding the Apostolic Constitutions and Ordinances, even those published in general Councils, nor the rules of the Apostolic Chancery, nor statutes, even sworn ones, nor even immemorial customs, nor even Apostolic indulgences granted in any way up to now, nor any other contrary things whatsoever. And these Letters shall be published in Rome, and shall have the same force as if they had been personally intimated and notified to each of those to whom they pertain. (1) Sacred Congregation of Rites, March 12, 1831.

[*Latin ed. p. 536*]

536 APOSTOLIC LETTERS. Therefore, no human being may infringe upon this page of Our Ordinances and Constitutions, nor dare to contradict it with reckless audacity. If anyone should presume to attempt this, let them know that they will incur the wrath of Almighty God, and of the blessed Apostles Peter and Paul. Given in Rome, near Saint Peter, in the year one thousand eight hundred and eighty-two, on the fourth day of June, in the fifth year of Our Pontificate.

C. CARD. SACCONI, PRO DATARIUS

TH. CARD. MERTEL, VISA DE CURIA

I. DE AQUILA, VICECOMITIBUS

Loco gg Plumbi Reg. in Secret. Brevium

I. CUGNONIUS, EX S. CONGREGATIONE CONCILII ROMANA

DUBIA SUPER APPLICATIONE MISSAE PRO POPULO.

July 9, 1881.

Through summary petitions, a COMPENDIUM OF FACTS.

On February 28, 1871, the Reverend Secretary of the Sacred Congregation for the Propagation of the Faith proposed the following doubts to be resolved concerning the application of the Mass for the people. He stated: "It is not rare for the Congregation of the Propagation of the Faith to propose doubts..."

[*Latin ed. p. 537*]

ROME 537 concerns the obligation of celebrating Mass for the people,

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which rests upon those who care for souls, according to justice. In order that uniformity may exist in the responses given by the Apostolic See, and by the various Sacred Congregations, such questions are proposed. C. To the Congregation, which is believed to have already issued some judgment on the subject matter. Indeed, on the aforementioned day, this question was presented to the full assembly in the aforementioned petitions. However, considering the gravity of the matter, the Most Reverend Fathers preferred to respond in writing: "Let the opinion of three Consultors be examined, chosen from the Secretaries of the Sacred Congregations of Rites and of Propaganda, and all others who are relevant to the matter." According to the mandate of the Congregation, the opinions were drafted, and we give a synopsis of them. SYNOPTIC DISCUSSION OPINION OF THE FIRST CONSULTOR. Regarding the first question, the Consultor stated: "Although a law is not recognized that imposes upon Bishops the obligation of celebrating Mass for the people on the days in question; as is also evident from the aforementioned decree of the Holy Council of April 18, 1864, which states: 'Bishops are bound by the obligation of celebrating Mass for the people, but no law has been established regarding certain days for the celebration;' nevertheless, it is certain, also from the aforementioned response, that 1. The obligation, as such, of this application rests upon the Bishops; 2. It can also be added that there is sufficient reason to declare that the extent of this obligation, with regard to days, cannot be less than that which rests upon the parish priests. Regarding the second question, it can be stated that, since the obligation of the Bishops is not less than the obligation of the parish priests, the Bishops can be held to be obligated to celebrate Mass for the people, at least on those days on which the parish priests are burdened with this obligation. However, the reason seems evident, by which the obligation of the Bishops cannot be considered a lighter burden than that of the parish priests, if indeed..."

[*Latin ed. p. 538*]

538 In ROMA, it would be absurd to consider the measure of the burden to be less for that part, for which greater arguments for the same burden exist. But the arguments for the burden of offering the Mass, and of praying for the people, apply more to Bishops than to parish priests. To demonstrate this, it suffices to consider what the fundamental reason for this burden is. And first, the question, which has been debated before, must be set aside: whether the greater or lesser frequency of offering the Mass for the people should be derived from the amount of income. For this matter, Benedict XIV, in the Constitution *Cum semper oblatas*, § 6, declared that it is sufficient if those who care for souls offer the Mass for the people on Sundays, and on other days of precept. A clearer argument, by which it is proven that the burden of offering the Mass for the people is not made greater or less by the amount of income, or it is inferred that such a burden also falls

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upon those parish priests who do not enjoy any income, but whose own sustenance is sufficient; Benedict XIV, cited, Constitution, § 8. Therefore, if the burden of offering the Mass for the people cannot be derived from the income assigned to each pastor, then from what reason can it be deduced? This reason, after common doctrine, will be explained by Ferraris, *Missae*, article 3, number 8: "The reason for these decrees is that the parish priest 'is bound to offer the sacrifice for the people, not by reason of sustenance, but by reason of office.' For just as he who takes a wife 'who is poor, without any or with very little dowry, cannot excuse himself, nor withdraw himself from the obligations of marriage, as the doctors commonly teach; so he who accepts a parish with meager income, is bound to fulfill the obligations imposed on the parish priest.'" Therefore, the true reason for this burden lies in the fact that the obligation of offering the Mass for the people is inherently connected to the office of caring for souls, and derives its origin from its intrinsic nature, just as the obligation of educating children arises from the condition of the parent, and the obligations of spouses towards each other arise from the nature of the marital state. This is clearly evident from the Council of Trent, Session 23, chapter 1, on reform: "Since..."

[*Latin ed. p. 539*]

ROME 539: "By divine command, it is required of all those to whom the care of souls has been entrusted, to know their flock, and to offer sacrifice for them." In these words from Trent, the Doctors see not only a positive divine precept, but also a precept of natural law, which certainly can be called divine, just as generally, obligations are inherent to every state or office. The Doctors also see this in the words of the Apostle in Hebrews 5:1-3: "Every high priest taken from among men is constituted in behalf of men that they may offer gifts and sacrifices for sins... And therefore he ought, as for the people, so also for himself, to offer for sin." Indeed, the Doctors do not see in these words of the Apostle a command, but an explanation of a matter that is inherently connected to such an office. Hence, St. Thomas writes appropriately in *Lectio 1 in Hebræos V*, that St. Paul "describes the priestly office." Having established this, namely that the most powerful reason for offering the Mass for the people lies in the proper office of the care of souls, it now remains to be seen whether this reason applies more to Bishops than to parish priests. St. Thomas in *Summa Theologica*, 19th question against the errors of the Reformers, chapter 4, clearly shows that this reason applies more to Bishops than to parish priests: "Bishops, who are constituted in higher authority, have more care for their subjects than even the parish priests themselves." St. Thomas repeats these words: "It must be said that the proper priest is not only a parish priest, but also a Bishop or Pope, to whom this care pertains more than to the parish priest." Furthermore, the Angelic Doctor continues: "It cannot be said that the Bishop is absolved from the burden of the care of souls when he entrusts the care of souls to

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the parish priest." To the objection that the Bishop, when he entrusts the care of a parish, exempts himself from this burden, it must be said that this is false; for it still pertains to him to have care for the entire flock entrusted to him. Hence, the Apostle said of himself in 2 Corinthians 11: "Besides those things which are outward, I am also full of care for the churches." Hence, the Angelic Doctor adds:

[*Latin ed. p. 540*]

540 ROMANA: "To choose pastors as assistants to the Bishop in such a care," ibid. "However, this does not become an unbearable burden for him (the Bishop), because he has 'other assistants of a lower order.' For, as the same Holy Doctor observes, ibid., 'Pastors can feed the flock of the Lord not only by themselves, but also through others, to whom they entrust the task; for he is understood to be doing something, whose author is himself.' But in this, the Bishops perform the principal part of the work, while the pastors fulfill the part of secondary assistants, as the same Angelic Doctor observes, ibid.: 'But he to whom someone is given as an assistant does not, by reason of this, lose the power of acting, when he is free; rather, he himself is the principal actor, and the assistant is the secondary agent.' As these words express, Cajetan in 2-2, question 184, article 5: 'Bishops assume care for souls as a principal agency; pastors, however, assume care for souls as an official agency of the principal.' From this, the reason is to be recalled, by which the same St. Thomas, speaking of pastors in relation to Bishops, attributed to them a care for souls that is not proper, but by a certain participation, 3-2, question 184, article 6, to 2. 'It must be said that Bishops principally have care for the sheep of their Diocese; while priests and archdeacons have certain ministrations under the Bishops.' From this it is clear that these (pastors) stand in relation to the Bishop, just as stewards or prefects stand in relation to the king. And for this reason, in the Church, the Episcopal care is committed with the solemnity of consecration; while the care of the archdeaconate or the parish is committed with a simple injunction. And again, ibid., to 3: 'It must be said that just as plebeians and archdeacons do not have principal care, but rather a certain administration, according to what is entrusted to them by the Bishop; so it does not pertain to them principally the pastoral office... but insofar as they participate in the care.' Thus speaks St. Thomas, who certainly does not express a particular opinion, but a common doctrine, firmly established. And therefore, in order to limit the discussion, if...

[*Latin ed. p. 541*]

ROMANA 541. The obligation of saying Mass for the people arises from the nature and office of the care of souls. It is clear that this obligation ought to weigh more heavily upon those to whom the office of the care of souls pertains properly, namely, bishops, by virtue of their episcopal consecra-

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tion, and upon their dignity and rank, than upon those who, in a secondary and, as it were, commissioned manner, exercise the care of souls, in order to assist the pastor in tending the flock. Therefore, it is absurd and contrary to reason that the obligation of saying Mass for the people should be less burdensome for bishops than for parish priests. And when the Apostle speaks of this office in Hebrews 5:1-3, as cited above, the Doctors say that he does not refer to any priest, but to the one who holds the primacy among the priests. Therefore, it is reasonable, all other things being omitted, that what St. Alphonsus wrote in book 6, number 327, is true: "But if pastors and all those to whom the care of souls has been entrusted are bound to celebrate and offer the Mass on Sundays and feast days for the people, then all the more are bishops bound to do so, as the principal pastors of souls."

OPINION OF THE SECOND CONSULTOR. This Consultor considered the solution of the doubts to be difficult, because of the reasons which are presented from various sides; nevertheless, he is of the opinion that bishops are not bound, as are parish priests, by the force of the obligation of the law, to offer the Mass for the people. The canons and decrees concerning ecclesiastical discipline exercise the same binding force as they had from the beginning. Therefore, it must be considered whether this obligation has been imposed upon bishops from the very beginning, and what the traditional custom has been, which is the best interpreter of the laws. The Council of Trident, Session 23, chapter 1, concerning reform, uses such general words when it states, "All those to whom the care of souls has been entrusted must acknowledge their flocks, and offer sacrifice for them..." that under this law are included pastors of sheep of any rank; and this decree, for a long time, has not obligated in a general, but rather in a specific manner. However, over time, specific days have been determined for this obligation of saying Mass for the people; but for bishops...

[*Latin ed. p. 542*]

542 In ROMA, it is not included under this determination, as is gathered from the subsequent resolutions which explained the mind of the Council. Since the Council of Trident does not specifically name Bishops, it seems to speak of lower pastors, or of parish priests: for whenever it wished to subject a person to a law who, by reason of their dignity, might seem not to be included, it made specific mention of that person. Thus, when the Council of Trident lays down a precept for Bishops concerning residence, it adds, "even if they are Cardinals of the Holy Roman Church," so that none of them might consider themselves exempt. Thus, in the Bulls, Bishops are expressly declared to be subject to penalties, and whenever the Council wished to include Bishops in a decree, it specifically called them by name. When the Council generally speaks, and does not determine the date of application, it leaves this to the discretion of those to whom the care of souls has been entrusted. Therefore, until the 17th century, the Mass was

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celebrated according to the judgment of the good men; as is gathered from various authors, who make no mention of fixed days. In the Council of Trident's Congregation, at the end of the 17th century, the question of this kind began to be raised; but this Congregation, interpreter and defender of the Trident, through numerous resolutions, applied the decree only to parish priests; and did not consider that Bishops were included. However, it may be objected: the law of the Council of Trident is general, and obligates all who have the care of souls; where the law does not distinguish, neither should we distinguish; therefore, Bishops are also obligated, as are parish priests. But it is answered first: that every general law has exceptions; and since in the present case the law has been applied only to parish priests, it is clear that an exception has been made for Bishops. Furthermore, if the law is to be understood strictly, it should extend to superiors of religious orders, and to confessors of nuns, who are true caretakers of souls. But this question, having been raised several times, has remained unresolved. The argument of the opponents: if parish priests are commanded by the law to recite the prayers before the Mass on certain days, then much more...

[*Latin ed. p. 543*]

In the year 543, it seems necessary to state that the parish priest is bound; however, this obligation does not apply in all and every case, for many matters are entrusted to subordinates, to whom superiors are not bound. "It is necessary," says the blessed Thomas, 1.2. q. 9, 5, "that the law should pertain to many things, both according to persons, and according to matters, and according to times." The purpose of this decree is that there should be someone to offer sacrifice for the people, to which he has a sacred right, just as it is a sacred duty of him who spiritually governs the people. However, since the decrees of the Holy Congregations only obligate the parish priests, the Bishops are to be considered exempt; for the inclusion of one is the exclusion of the other. It must also be noted that the aforementioned decree of Trent does not merely prescribe the celebration of Mass for the people by the parish priests, but also preaching and the administration of the sacraments. Just as the Bishops are not considered obligated in these matters, because they know that these things are done by the parish priests, so too it can be said that they are not bound to the application of Mass, as the parish priests are known to be bound. Furthermore, our opinion is confirmed by the silence of Pope Benedict XIV in the Constitution *Cum Semper Oblatas*, in which not a single word is mentioned concerning Bishops, in order to make clearer the burden placed upon those who care for souls. The same can be said of the Encyclical of Pope Pius IX, in which no questions or doubts regarding this matter could have been hidden; nevertheless, silence was maintained. From all of these things, it can be gathered that Bishops are not bound, as are the parish priests, to the application of Mass for the people, neither by the general decree, nor by the Pontifical Constitutions,

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nor by the resolutions of the Holy Congregations. But can it be said that Bishops are not released from any obligation whatsoever? By no means; for the divine precept, proclaimed by the Apostle, which is confirmed by Trent and declared by Apostolic letters, especially binds even the Bishops; who cannot be excused from mortal sin if they do not offer Mass for the people. And they are not bound as the parish priests are; but they are bound by the general law as caretakers of souls; in this sense they are included in the decree of Trent; as has been decided by the Holy Congregation.

[*Latin ed. p. 544*]

544 In ROMANA, concerning the Council regarding the Abbot of St. Martini, dated April 18, 1864, it is stipulated that nothing is prescribed by law concerning certain days for the celebration [of Mass]. Therefore, Bishops, mindful of their obligations, as indicated by the Apostle, must fulfill them as before the Council, because no reason exists for introducing any innovation. However, if the matter is to be settled, and uniformity is to be established in this disciplinary point, and further questions are to be precluded, I believe, said the Consultor, that it should be declared that Bishops are obligated, by the force of law and the obligation of justice, to say Mass for the people on the major feasts of the Church, as prescribed by the Council of Trent, Session 23, chapter 14, concerning priests. From this declaration, it would follow that Bishops, on those days, would be subject to the same conditions as parish priests, and if they are unable to say Mass themselves, they must have it said by others. If the Bishop has a parish, as is customary in Hibernia, then, unless Mass is said by a Vicar, he must say it himself, and he cannot fulfill this obligation by offering a sacrifice that he applies for the entire Diocese, as was declared concerning the Bishop of Dumorensis in the year 1863. Finally, said the Consultor, since the law does not clearly obligate Bishops as it does parish priests, hence, concerning the two doubtful propositions, I agree with Benedict XIV, Notification XIII: "Bonds should not be imposed if there is no clear law that imposes them."

OPINION OF THE THIRD CONSULTOR. In the doubtful propositions, said this Consultor, it is asked whether the obligation to which parish priests are subject also applies to Bishops, extensively and intensively: extensively, it is said that it applies on all Sundays and feast days of precept, even if they are dispensed; intensively, it is a question of the obligation of justice, as is evident from the wording. However, he also noted that the question is not about a divine, or rather, natural law proclaimed by the Apostle, "For every high priest taken from among men is ordained for men in the things that appertain to God, that he may offer up gifts and sacrifices for sins." For we certainly know that Bishops are divinely obligated to offer sacrifice for the people entrusted to them several times a year. Therefore, the present question is about positive ecclesiastical law, and it can be divided into two questions, the first of which asks whether

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this obligation exists; if the answer is affirmative, the second question arises as to how it exists.

[*Latin ed. p. 545*]

ROME 545, or from what source such an obligation arises, whether from law, be it canonical or pontifical, or from custom. The Consultor, having assailed the proponent's opinion, refuted it with three arguments, drawn from the decrees of the Holy Congregations, from the authority of jurists and theologians, and finally, from the analogy of the obligation of parish priests. The decrees presented by the Consultor, upon which he based his argument, were taken from the Holy Congregations of the Council, of Propaganda Fide, and of Sacred Rites. Some of these decrees are found in the Acts of the Holy See, Volume III, pages 365, 368, Volume I, pages 407 and 408; the others will be referred to in an appendix placed after this discussion. The Consultor then proceeded to present his argument based on the authority of jurists and theologians; whose names and authorities he cites extensively. All of these, with clear words, teach that, just as the parish priest, so too is the Bishop bound to offer the Mass for the people. Ligori, among others, says in his work, *Homo Apostolicus*, Tractate 7, paragraph 65, page 158: "I omit, finally, the discussion of other duties of the Bishop, such as the Mass which he, even more than the parish priest, is bound to offer for his flock." Proceeding to the third argument, drawn from the analogy of the law that obliges parish priests to offer the Mass for the people, the Consultor argues that Bishops are also bound to do so. And first, he says, this is indicated by the words used in the law to designate parish priests: "Pastors... all and each"; words which most clearly indicate Bishops. Secondly, the reason for the law that binds pastors to offer the Mass for the people, namely, not for the sake of benefit, but of office; not for the sake of goods or revenues, but of ministry: that is, because of the pastoral office which is full and complete in Bishops, and which is conferred upon them principally and divinely, unlike the case with parish priests. And therefore, it is not understood how Bishops could be exempted from this obligation. Thirdly, the natural and divine law, from which this obligation is derived, is absolute, immediate, and properly said to be in Bishops, whereas it is otherwise in... [The text is incomplete here].

[*Latin ed. p. 546*]

546. To the parish priests of ROMANA. Finally, the strictness of discipline in the parishes, which is evident in all and every part of the law. Therefore, it seems to be concluded, with the learned Doctor, St. Alphonsus, that, a fortiori, this observance ought to be demanded by the Bishops. The custom of offering the Mass for the people favors the application of this duty. It is well known that a custom is established when it is frequently practiced by the majority of the community. The custom by which Bishops

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offer the Mass for the people is derived from the responses of the Holy Congregations, which provide answers to many doubts of this kind, and which therefore presuppose the custom. For the Holy Congregations, unless they had observed that this duty was at least observed by most Bishops, would not have declared that Vicars Apostolic, who preside as legitimate pastors in places where an Episcopal See is canonically erected, are also bound by this obligation. (1) This is also proven by the testimony of Doctors, the majority of whom have this obligation and attest to its certainty. Whether this obligation originates from certain law or from custom is debated by some authors. However, it seems to the Consultors that this obligation was introduced by custom, which subsequently received confirmation, extension, and perfection from written law. The objection is refuted, stating: "Certainly, there is an obligation; but this does not properly originate from divine law, nor from any law of Councils: the Holy Congregations presuppose it, they do not impose it; the Doctors testify to it, but they cannot establish it: the force of the obligation of the parish priests is indeed present in demonstrating whether it exists, but not in creating it; therefore, it remains to be repeated that it is a custom." Finally, the Consultor concluded: "Although there is no written law that expressly imposes this burden on the Bishops, I believe that, from the aforementioned, it is abundantly clear that the matter is in such a state that a law of this kind can safely be enacted. For, since we are dealing with a very serious matter, namely, the imposition of an obligation, and..." (1) Compare Vol. I, pp. 407 and 408, *Libr. Ephem.*

[*Latin ed. p. 547*]

In ROMA, it would be highly opportune for the bishops to fulfill this duty through some general law. With these premises established, two doubtful propositions are presented:

I. Are bishops obligated to say Mass for the people every Sunday and on holy days by order, even when dispensed?

II. To what extent, and how can the obligation be expressed that is incumbent upon bishops to offer the Mass for the people?

RESOLUTION. The Sacred Congregation, having carefully considered the matter, decided on July 9, 1881, to respond as follows:

To I. Bishops are to be obligated to offer the Mass for the people; and it is to be consulted with the Most Holy Father, that the same bishops should be obliged to offer the Mass for the people on all Sundays and other holy days, both by order and when dispensed.

To II. As provided in the first.

FROM WHICH THESE CONCLUSIONS ARE DERIVED:

I. Although it has not yet been definitively established by either divine or human law how often or on which days bishops should say Mass for

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the people, this obligation has nevertheless always been considered to be among the most important of the duties of bishops.

II. Indeed, since the obligation of saying Mass for the people arises from the very nature of the office of caring for souls, it rightly follows that this obligation is greater for bishops, because the care of souls, by virtue of the episcopal consecration, properly belongs to them, and their condition, dignity, and *gradum* are constituted by it.

III. For every priest is taken from among men, that he may offer gifts and sacrifices for the sins of men, in things that pertain to God. And therefore, just as he offers for the people, so also he ought to offer for himself.

[*Latin ed. p. 548*]

548 ROMA I V. Neither does the Bishop absolve himself, according to the Thomist doctrine, when he entrusts the care of a parish to priests: because it still pertains to him to have care for the entire flock entrusted to him; hence, the Apostle said of himself in 2 Corinthians 11: "Besides those things which are outward, my daily care is for all the churches." V. In order that doubtful questions might be prevented, and that the uniformity of discipline might be maintained, the Apostolic See has decreed that all Bishops of the Eastern and Western Churches, even as Parish Priests, shall offer the Mass for the people, on all Sundays and other feast days, both by order and by dispensation. VI. However, in recent Apostolic letters, it has been declared that pastors of souls will sufficiently fulfill this office by celebrating and offering one Mass for the entire people entrusted to them, even if they govern two or more Dioceses and Abbeys equally principally. (1) VII. It is also understood that Bishops offering the Mass on the prescribed days for the faithful of their Diocese do not fulfill the obligation of offering the Mass for the people of their parish, if they have a parish. (2) VIII. Vicars Apostolic are also subject to this obligation of offering the Mass, who reside in places where Episcopal Sees have already been canonically erected, and who have been sent to those places to perform the duties of legitimate pastors. (3) (1) Dioceses can be united either equally principally or through a plenary and exclusive union; and through an accessory union. In the case of a union that is plenary and exclusive, two or more Dioceses are united in such a way that they become one. In the case of an accessory union, two or more Dioceses remain distinct from each other, so that they cannot be identified. And therefore, in the first case, the Bishop fulfills the obligation of offering the Mass with one sacrifice: because, through said union, one people is formed; in the second case, he must offer more sacrifices, because he has more people. And it would be unjust if the faithful from one Diocese were deprived of the Mass to which they have a right. (2) Thus it was defined in Visé, and in a doubt proposed to the Sacred Congregation of Propaganda in the year 1691, as is related in the following appendix. (3) Cf. Vol. I, page

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407, *Libreria*, *ephemeris*.

[*Latin ed. p. 549*]

549 APPENDIX V. Concerning the burden recently imposed upon Bishops to offer the Mass, and concerning various resolutions of the Holy Congregations pertaining to this burden. Although there was not a unanimous opinion among the Doctors regarding the days on which Bishops are obligated to offer the Mass for the people; nevertheless, all were agreed that Bishops are greatly burdened by this obligation. For it had been received by all, as if descending from a divine precept, that "the holy sacrifice of the Mass" must be offered by pastors of souls for the people entrusted to their care. This was indicated by the Council of Trent, Session 23, chapter 1, concerning reforms, with these notable words: "Since it has been commanded by divine law to all to whom the care of souls has been entrusted, to acknowledge their flocks, and to offer sacrifice for them." Therefore, so that the matter would not remain uncertain any longer, and so that this obligation, mentioned by the Holy Council, would not be abolished or at least weakened by empty and frivolous interpretations, a written law was necessary, which would precisely impose the burden upon all pastors of souls, and would determine the days of this burden. It would not be sufficient to indicate that the obligation had peacefully obtained through custom: for men, generally averse to burdens, easily increase and prolong doubt, should it arise, concerning any obligation. "Indeed," says Benedict XIV in the Constitution *Cum Semper Oblatas*, "we are not unaware of the various kinds of evasions by which some seek to avoid the fulfillment of the aforementioned obligation (which burdens the parish priests)." Deeply considering this necessity, the Most Reverend Fathers of Trent judged it insufficient to answer affirmatively to the question: "Are Bishops obligated to offer the Mass for the people on all Sundays and feast days, even on those that are suppressed?" But they responded: "Bishops are obligated to offer the Mass for the people; and it is advisable that the Most Holy [Congregation] deign to determine whether the same Bishops should also be obligated to offer the Mass for the people on all Sundays and other feast days, both those that are prescribed, and those that are suppressed." This is an indication from the practice of the Holy Congregation, that the Roman Pontiff will enact a law.

[*Latin ed. p. 550*]

550 APPI [DIX. V. concerning which it ought to impose, and which determines the days of obligation. It was certainly not unknown to the immortal Pontiffs Benedict XIV and Pius IX that the question concerning the obligation of parish priests had been discussed, defined, and decided upon several times by the Holy Congregations, and especially by the Sacred Congregation of the Council; and that some of those decrees were also endowed

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with pontifical sanction. Nevertheless, each one considered it good to issue a constitution, or to present a written law, so that the severity of discipline might not be diminished by any evasion. Hence, the most learned Pontiff, Benedict XIV, supported by the supreme apostolic authority, issued the Constitution *Cum semper oblatas*, ordering that each Bishop should embrace it, and should diligently ensure its execution in his own diocese; from which, as he himself says, the words of Trent should be clear, and the Sacred Congregation of the Council constantly resolves: that those to whom the care of souls has been entrusted, ought not only to celebrate the sacrifice of the Mass, but also to apply the fruit thereof for the benefit of the people entrusted to them. The immortal Pius IX, moreover, considered it necessary to declare again that parish priests, and others actively engaged in the care of souls, ought to offer the Holy Mass for the people on all festive days, even those reduced [in number]. He provided for this necessity through the Constitution *Amantissimi Redemptoris* on May 3, 1858. Regarding this matter, it could not be avoided that the obligation of offering the Mass for the people, with the determination of days, should be imposed upon the highest assembly of Bishops, without a written law, suitably enacted, and immediately emanating from the supreme Pontiff. Hence, Leo XIII, whom we joyfully revere, having received the request from the Most Eminent and Reverend members of the Congregation, accepting their prayers and ratifying the resolution of the same Congregation, issued the Apostolic Letter *In suprema*, through which an end was put to all hesitation. These Letters concerning the aforementioned obligation state as follows: "Having therefore considered these matters for a long time, and having heard the venerable judgments of our Brothers, the Cardinals of the Sacred Council, we decree and declare that all Bishops, with whatever dignity, even with the dignity of Cardinal, as well as Abbots possessing jurisdiction almost episcopal over a certain territory and people, on Sundays and other festive days, which are still observed according to the precept, and which have been reduced in number from the days of precept, without any pretext of the scarcity of revenues, or any other excuse, shall offer the Mass for..."

[*Latin ed. p. 551*]

551 To the Congregation of Councils: It has not occurred to my predecessors that no Mass has ever been celebrated by the parochial vicars of cathedrals for the people. As soon as this defect was observed, I immediately ordered that, on each Sunday and feast day, the vicars themselves should, in turn, offer a single Mass for the people, at their own expense. I say "single," although the parochial vicars of cathedrals are said to be four in number— nevertheless, the Mass for the people should be a single one, because there is only one Church, and only one altar. Indeed, the vicars themselves are not proper titulars, but truly coadjutors. They perform parochial duties in the name of the Bishop, to whom the immediate care of

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the parishioners belongs. Therefore, the Bishop himself should implore the approval and confirmation of this provision. "Hence, the following question arises: Whether a single Mass for the people should be offered, and by whom it should be offered in this case, etc." The Sacred Congregation of Councils, on December 17th of the year 1803, responded: "Affirmatively, at the expense of the vicar, and in accordance with the understanding (1)." In the year 1864, the Canons of the Cathedral, in the Appendix V, decreed that the parochial vicars are to celebrate and apply the Mass assigned to them for the people. "And so that no doubt may arise, we declare that the same Bishops and Abbots will be able to fulfill this office sufficiently by celebrating and applying a single Mass for the entire people assigned to them, even if they have two or more dioceses and abbeys, in which the unity is maintained." Since it is our desire to bring to the attention of our readers whatever may be useful to them, we have thought it appropriate to include here some resolutions of the Holy Congregations that pertain to this matter. We have observed that in these resolutions, many questions have already been clarified, which might arise from the new law regarding the obligation of offering a Mass, recently imposed on Bishops. There is no mention of these questions in the Apostolic Letters, perhaps because it was already known that they had been explained by the Roman Congregations. The Bishop of Visen, in a report on the state of the Church, explained that the Holy Congregation (1) It should be noted that this question encompasses first the doubt— whether, besides the Mass which the Bishop, as such, celebrates for the diocese, he is also, as a parish priest, bound by the law to offer a Mass. The Holy Congregation does not doubt this: for the Bishop himself, as is explained in the document of the Congregation, must offer two distinct sacrifices, not only for the entire flock, but also for the sheep of the parish. Therefore, the Holy Congregation responded that only a single Mass should be offered at the expense of the vicar, namely, the Bishop. But if he is legitimately prevented from offering the Mass for the parishioners, he is obliged to do so for the entire flock.

[*Latin ed. p. 552*]

552 APPENDIX: Concerning the Cathedral Church of St. Hippolytus, situated in the Cathedral, and in cases where it is vacant, the following was decided, among other things: Regarding those feasts in which the Bishop, as is customary on Episcopal feasts, intends to celebrate and apply the conventual Mass for the benefit of the benefactors (1), because the Bishop applies [the Mass] for the people, and at the sacred hour of none, the Canon, who is also the parish priest, considering himself free from the obligation to apply [the Mass] for the people, applies [the Mass] for the benefactors in the morning hour, after the sermon, in the manner of a conventual Mass, while the chanters in the choir sing the same Mass.

Subsequently, the following doubts were presented to the Sacred Con-

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gregation of Propaganda Fide:

I. Whether Apostolic Vicars and missionaries, who in any way undertake the care of souls in a particular place, are bound, by reason of justice, to apply the Mass for the people on feast days.

II. And to what extent does this obligation pertain to Apostolic Vicars and missionaries, and in what manner?

Regarding this matter, it was decided to consult with the Reverend Canon, concerning all omissions in the celebration of Mass for the people in this case. The Sacred Congregation of Propaganda Fide, on March 23, 1863, responded:

The Sacred Congregation, on August 24, 1867, responded: Affirmative, provided that ten Masses are celebrated for the people within two months; and the Bishop should warn the parish priest, and the missionaries who are sent, that they are bound to apply the Mass for the people, even on those days, in which the Bishop celebrates pontifically his own Mass at his own expense, alternating the application of the Mass by the parish priests. This is confirmed in clear terms in the case of Nullius Sublacen. Concerning Parochial Rights, September 18, 1824.

(1) Note that, both in the proposition of the doubt and in the solution, it is considered as incontestable that the obligation of applying the Mass is the same for the Bishop and the parish priest. Thus, the obligation rests upon the Bishop for his diocese, and upon the parish priest for his parish. Compare Acta S. Sedis, Vol. III, 365.

(2) Note that the Congregation generally responded that missionaries are not bound by the obligation of applying the Mass; however, it made an exception for Apostolic Vicars and missionaries who perform the office of a bishop or parish priest, which it designates by the same name of pastor. And those, according to the mind of the Sacred Congregation.

[*Latin ed. p. 553*]

IX, v. 853, Ad VI. Following the explanation given above, the following doubt was presented to the Holy Congregation for consideration (1). Ad VII. To the Most Reverend Secretary, addressed to the Bishop who exercises the office of pastor. The Bishop of Antibar, in AlVI, as administrator of a parish, proposed the following doubt: "Is a Bishop who exercises the office of pastor also bound by the obligation of applying the Sacrifice of the Mass for his diocesans on festive days within that parish, in addition to the office of pastor?"

VII. "If the same Bishop does not fulfill this obligation, and I were to exercise the pastoral office, would it be sufficient for me to apply the Sacrifice of the Mass generally for my diocesans, considering the omissions made in the past?"

The Sacred Congregation responded on March 23, 1863: "Because the

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aforementioned Bishops and administrators are bound by this obligation, see Acta s. Sedis, Vol. 1, p. 407, where the question is presented in its entirety. It should also be noted that this decree declares a response given at the beginning of this century by the same Holy Congregation to the Apostolic Vicar of Tunchini occidentalis. Since this matter was in question, whether the Vicar was also bound by the obligation of applying the Mass for the people, the same Holy Congregation of Propaganda Fide responded to him in this way: 'The Sacred Congregation responded to the questions proposed by A. T. concerning the application of Masses, in accordance with what has already been decreed, that neither the general Vicar, nor the coadjutor of the Apostolic Vicar, nor the Apostolic Vicar himself, are bound by any obligation, by reason of justice, to apply the Mass on festive days for the people to whom the aforementioned titles pertain; but it is fitting to do so out of charity, for which no absolution is required for the omission of the sacred application.'"

In this response, the Holy Congregation speaks of Apostolic Vicars, who do not hold a bishopric; it did not speak of others, because in this case, it did not wish to give an absolute teaching on all orders of prelates who are called Apostolic Vicars.

(1) The meaning is that if the Bishop, in the city of Newry, does not have a Vicar to administer that parish, he must appoint one; and through him, he must also fulfill the obligation of the Mass for the people; however, in accordance with § 9 of the Constitution of Benedict XIV, Cum semper oblatas, he must consider this burden when establishing a suitable provision for him.

(2) By the phrase "facto verbo cum SSmo," as we have said before, the Most Reverend Fathers who constitute the Holy Congregation request from the Most Reverend Father the granting or confirmation of grace, which it was not within their power to grant. By the phrase "dominum ad Secretarium cum SSmo," the same Most Reverend Fathers confide their intention to the Secretary, who presents it before the Most Reverend Father concerning some question, or matter to be resolved, or a response to be given.

[*Latin ed. p. 554*]

554 APPENDIX

r. v. "Licitatem," etc. ergo dicere posset: "qui sentit commodum, debet?" et incommodum sentire; "nihilo minus me decisioni et oraculo sacrae Congregationis subiicio."

Cui dubio, sacra Congregatio die 25 Septembris responsum dedit: "Non ita de obligatione, de qua dubitatur, si scilicet, cum vices parochi in aliqua vacanti cura imples, onus tibi insit Missam applicandi pro paroecialis illis, nam hoc in casu satis erit, te diebus statutis Missam applicavisse pro

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tuis dioecesanis, inter quos paroecia comprehenditur, quam per accidens administras." (1)

Sequentes quaestiones enodandae propositae fuerunt eidem sacrae Congregationi:

I. An obligatio applicandi Missam pro populo, quae secundum ius Ecclesiae occidentalibus imponitur Episcopis et parochis, locum pariter habeat in iisdem personis ritus orientalis?

II. Quatenus affirmative, an, quoad dierum determinationem, servari debeant leges et consuetudines rationales, quae vigere reperiantur in aliquibus dioecesibus eiusdem ritus?

III. An in defectu talium legum et consuetudinum, eiusmodi dierum determinatio fieri debeat juxta normam et integrem extensionem legum occidentalium?

IV. An ob graves rationes et circumstantias, locus fieri possit alicui redactioni dierum, qui determinati sunt a legibus occidentalibus, et deveniri etiam ad totalem dispensationem, obligatione tamen iniuncta orandi pro populo in iisdem missis, quae applicari pro eodem deberent?

Sacra eadem Congregatio sub die 23 Martii 1863 respondere censuit:

Ad I. Affirmative.

Ad II. Affirmative.

Ad III. Negative.

Ad IV. Provisum in tertio et ad mentem. "Mens est ut, data occasione, certiores fiant Episcopi Ecclesiae orientalis de onere quod etiam in ipsa incumbit pastoribus animarum applicandi aliquando Missam pro po-"

(1) Emulus Tarquini in suo voto ad hoc ait: "Huius dissensionis ratio est, quod agitur de casu quo per accidens vacua facta aliqua paroecia, Archiepiscopus idonea personam carebat, ut eidem paroeciae consuleret. Et ideo, quum praesul vi proprii officii episcopalis, per quod omnes dioecesanos curare debet, paroeciam administrare, haud fiebat Vicarius paroecialis, neque novum assumebat titulum. Quamobrem, sacra Congregatio merito ab onere Missae paroecialis eundem liberavit, reputans decimas aliosque proventus minime uti argumentum novi tituli assumpti, sed uti meram operis, tunc suscepti, mercedem."

[*Latin ed. p. 555*]

APPENDIX V. 555. In the matter of the application of the Missa, and concerning the determination of days, on November 12, 1831, the following response was given: "To the question concerning whether this application should be subject to the same discipline as that of the Western Church, so that it may be known by those to whom it pertains, and so that they may, as far as possible, adapt it to their dioceses, and in every case propose to the Holy See the measures which they deem necessary." Regarding Vicars capitular, the following was proposed to the Congregation of Rites: "Is it the

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opinion of the Vicars capitular that this application of the Mass should be made only when the see is vacant?" The Sacred Congregation responded: "Negative." Regarding the question of whether Bishops are bound to apply the Mass to their flock after having taken possession of their see, the following was proposed to the same Congregation: "Are Bishops bound to apply the Mass to their flock immediately after being elected to the chapter?" The Sacred Congregation, in Marsorum, on the same day, November 12, 1821, responded: "After having taken possession." (1) The Bishop of Marsorum proposed to the same Congregation a question concerning feast days, in the following words: "When a Bishop is bound to celebrate Mass pontifically on feast days, are the canons bound to sing the conventual Mass for the benefit of the faithful?" The same Sacred Congregation, in a monastery, on June 14, 1845, responded: "Only those who exercise pastoral care." And according to this doctrine, in the 'Instructiones' recently given, concerning the obligation of applying the Mass, it was stated: "As it is most necessary that the Bishop should be subject to the same obligation imposed upon the parish priests; thus, on feast days, he must apply the Mass to his flock. Therefore, this Mass, solemnly celebrated by the Bishop, cannot take the place of the conventual Mass, to which the canons are bound."

[*Latin ed. p. 556*]

APPENDIX Y. 556: "It seems opportune, however, to clarify that those who possess such [rights], as has been stated above, are not subject to the office of the Bishops, concerning which we have spoken. Those Bishops are obligated to fulfill their duties, as they are called upon to do, and those who are promoted to the dignity of Bishop, whether clergy or laity, are therefore entrusted to the governance of Rome by the Roman Pontiff, and it is clear that they are the pastors of the Cathedral Churches. These churches, which were once flourishing, are now deprived of the clergy and the Catholic people, so that their ancient dignity and memory may not be utterly erased.

DIVISION OF PAROCHIAL REVENUES. August 6, 1881.

SUMMARY OF FACTS. On the first of December, 1879, the priest Diomedes reported to the archpriest of the parish, which he administered in the collegiate church A, and immediately the care of souls was entrusted to the priest Dominic. For the work he undertook, during almost the entire vacation period, that is, from the first day of the month of December of the year 1879, to the second day of April of the year 1880, he received no compensation whatsoever from the revenues of the parish that were assigned to him, nor was it permissible for him to expect any payment from the civil authority. Only in the aforementioned month of April was he able to obtain a decree in Riez, by virtue of which he was approved as the parish administrator, and he began to enjoy the stipend that was assigned to him, amounting to exactly twenty pounds. In the meantime, Dominic had obtained the nomination as principal patron, and had received his

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institution from the Bishop of the parish; indeed, although nine years have passed..."

[*Latin ed. p. 557*]

DIVISION OF PAROCHIAL REVENUES 557. Having elapsed the months since the twentieth day of the same month of May, on which the aforementioned parish priest acquired possession, he has been unable to receive anything from the fruits thereof, lacking another form of legal authority that would grant him possession of the goods. Given the persistent circumstances, his predecessor, the archpriest Diomedes, requested from the curate economist that the fruits of the parish be distributed according to the Constitutions of the collegiate church, the validity of which extends from the first day of September until the end of the month of August. Therefore, when the parish priest resigns on the first day of December, whatever the new archpriest will receive from the government, it must be divided with the aforementioned predecessor, in proportion to the three months. The archpriest objected, stating that the treasury had added a portion of the revenues during the period of vacancy, and that nothing should be returned to the curate economist until the latter obtains a royal decree.

RIGHTS OF THE PRIEST DIOMEDES. He maintains that the division of the fruits in proportion to the time elapsed is necessary, because, according to the law, the fruits of a benefice are due for the personal service rendered, and for the proper sustenance of the person serving, and for this purpose they are established, as expressly stated in Chapter 12, question 1, as elegantly declared by Albericus in *leg. Divortio*, ff. solut. matrim., under number 12; correctly arguing from the fruits of dowries of goods to the fruits of benefices; for both are due for the sustenance of the wife, according to *L. pro oneribus*, *L. de Iur. Dot.*, and *L. Assiduis C.*, which concern patrons, etc. The Cardinal De Luca, in *de benef.*, discourse 84, number 6, agrees with this sentiment: "The fruits are rather considered compensation, or the price of labor, and therefore, one should marvel at those who share in the fruits, even if not exactly in proportion to the time, as if they were compensating for marital burdens."

Furthermore, Septimius Vecchiotti reasons in his work...

[*Latin ed. p. 558*]

558 CONCERNING THE DIVISION OF PAROCHIAL REVENUES, entitled: "On the method of dividing revenues and benefits between predecessor and successor," § 78: The division in proportion to time is provided by the very nature of the benefice, when considered in its true legal and canonical aspect. For what is a benefice? All canonists agree that it is "a perpetual right to receive the fruits from the goods of the Church, by reason of spiritual office, established by ecclesiastical authority, or a right to exer-

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cise a spiritual office, established by ecclesiastical authority, to which the right to receive the fruits perpetually is annexed." Therefore, the nature of a benefice consists in an obligation and a right; so that the one is linked to the other, and, according to the obligations fulfilled, the dependent right must be determined. Therefore, if the beneficiary fulfills the obligations for the year in question, it is also just that he enjoy the right for that year. But the obligation consists in the service to the Church and the annexed obligations, while the right refers to the enjoyment of the beneficial revenues. Therefore, these revenues must be divided, with due proportion to that obligation, that is, in proportion to time. Therefore, I conclude with Guttierez, I, c. n. 33: "Our opinion and decision on this matter, namely that the division of fruits must be clearly made between the heir of the deceased beneficiary and the successor in the benefice in proportion to time, is far more valid, truest, and to be observed in practice." Thus, if Diomedes has performed the service of the parish for three months, the fruits corresponding to that time necessarily belong to him. Finally, the custom comes to Diomedes' aid, which in matters of benefices is recognized by no one as being of great value. Thus, Maschat writes in *Institutiones Iuris Canonici*, title 7, on the transition of Bishops, title 6, number 9: "When dividing the fruits between the predecessor and successor, the custom of the place must be considered above all, which usually relies on equity, so that neither is harmed." However, in the Collegiate Church A, the custom is to divide the parochial revenues in proportion to the service; therefore, the fruits for three months rightfully belong to Diomedes. And he says that it is not an obstacle that the Fiscus, during the vacation, ...

[*Latin ed. p. 559*]

DIVISION OF PAROCHIAL REVENUES 559. All things have begun to prosper; for his action is equal to that of a thief, who takes a portion of money from a chest, which belongs equally to two owners. What remains in that chest, undoubtedly, would be divided equally between the two owners. Furthermore, due to the negligence of the steward, the Demanium [royal treasury] does not pay the pension owed to the parish priest. Indeed, it is established in law that the negligence of another cannot harm a third party, as decreed by the Rota, Decree 228, § 2, in Romana [Rome] or Smolensko. Pecuniaria, January 20, 1319, under Pope Odescalchi. Therefore, from what has been explained so far, it is clear that Diomedes has the right to receive the fruits in proportion to the time he served the parish. RIGHTS OF THE STEWARD. On the other hand, it appears that Diomedes lacks the power to act against the Archpriest in order to obtain the fruits. For it is clear to everyone that the creditor has the right to bring an action against the debtor, in order to compel him to pay. However, Diomedes is a debtor to the royal treasury, which has seized the parish property, and which refuses to acknowledge the custom of that collegiate church;

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but in the division of the fruits, the civil year is followed, namely, from January 1st to December 31st. The steward proposed a concordat for the sake of peace, whereby, after deducting the months for which he received nothing from the treasury, the loss would be divided between them. But Diomedes refused to agree to this concordat, believing that he would suffer no loss, due to the distinction between the ecclesiastical year and the civil year, which, although introduced by the government, must be observed. Diomedes cannot claim that he should be paid before the parish priest, according to the saying: "First in time, first in right." Moreover, there is no doubt that Diomedes and the Archpriest are acting in the same action, as is clearly evident from the reasons already explained. Indeed, when several creditors bring an action, none is considered prior to the other, but both must participate in proportion, as decreed by the Rota, Decree 344, no. 1, throughout part 17 of the Recentiores. With these considerations in mind, the purpose has been to clarify...

[*Latin ed. p. 560*]

860. CONCERNING THE DIVISION OF PAROCHIAL REVENUES: Whether and how parochial revenues should be divided in a certain case. RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter, on August 6, 1881, decided to respond: Negatively, in all cases. (1) Since a portion of the revenues is withdrawn by the royal treasury by virtue of law, the division of revenues could not take place between the predecessor and successor in a parochial benefice, according to the time during which each bore the burdens of the Church. Thus, neither the custom of that collegiate church, nor the ecclesiastical year, beginning on the first day of July and ending on the last day of June, could apply. In the following question concerning the division and restitution of revenues, it is to be observed how the Sacred Congregation has ruled regarding the division of revenues. DIVISION AND RESTITUTION OF REVENUES. January 28, 1882. SUMMARY OF THE CASE. Through the renunciation made by the parochial administrator, Jerome, of the Order of St. Augustine, on January 12, 1880, and accepted by the Bishop, the rural parish under the title of the Most Holy Apostles Peter and Paul, located in the town, became vacant. To govern it, both the pastor and the aforementioned priest, Paul, were appointed by the Bishop. However, this priest refused to accept the administration of the parish until provision was made for his honest sustenance, since the parish priest, Jerome, had collected almost all of the revenues that had matured in the preceding year. The Bishop, deeply grieved by this, made considerable efforts to ensure that the matter would be resolved amicably between the predecessor and

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successor. But when his...

[*Latin ed. p. 561*]

DIVISIONIS ET RESTITUTIONIS FRUCTUUM 561, neither side yielded, and the entire matter was brought before him, and, according to a revised scheme of revenues, based on the ecclesiastical year, from the first of July 1879 to the 30th of June 1880, he divided the revenues into two equal portions, assigning one portion to the Parish Priest to be received by the Economus. This method of acting, however, did not please the Bishop's predecessor, who presented his complaints to the Bishop, urging that consideration be given even to the six months and twelve days during which he had administered the parish. After hearing these arguments, and in order to remove harmful divisions among the faithful, the Bishop, by a letter dated May 7, 1880, informed Jerome that he must either comply with the instructions, or resume the exercise of his pastoral duties until the month of June. And if, within four days, he failed to comply with one or the other, he would incur an immediate suspension from divine offices. Faced with such threats, Jerome paid the new Economus the sum of one hundred and seventy-four livres, according to the Bishop's calculation, warning the Bishop that he would appeal to the Holy See.

I. J. Disputatio Synoptica. DEFENSE OF THE PARISH PRIEST. The Regular Parish Priest maintains that he is owed both the entire revenue of the year 1879, and the revenue corresponding to the twelve days during which, at the beginning of the year 1880, he provided his services in the capacity of Parish Priest; and therefore, the Bishop's decision is to be rejected, or, at the very least, reformed, because it contradicts both established practice and the law currently in force regarding this matter. With regard to practice, he observes that, after the political occupation, the Italian government decreed that the revenues and expenses of benefices should be divided in proportion to the time, without any distinction between predecessor and successor, according to the civil year. This practice, he says, although introduced by force and illegally, is followed throughout Italy, and has been universally adopted by our Diocese, with the exception of the case in question. Acta, Vol. XIV, p. CLXVII1. 36

[*Latin ed. p. 562*]

562. ON THE FRUITS OF DIVISION AND RESTITUTION: From this, the episcopal decision is entirely contrary to the constant observance, at least tolerated, by the Apostolic See. Having considered these matters concerning practice, the question was examined in relation to the canon laws, and it was argued that the Bishop's decision was no less contrary to these laws, with these words. According to canon law, it is certain that, when a parish is vacant, the Bishop appoints an *oeconomus* [administrator], to whom a compensation is established, to be paid to him in proportion to

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the time he renders service. The aforementioned person was also named *orator* [advocate]; but, considering the smallness of the benefit, all the revenues of the parish, and all the burdens to be fulfilled, were entrusted to him by the Prelate. Regarding this matter, since the *orator*, having rendered service and fulfilled the burdens for eleven years, should have received all the revenues for those eleven years, and certainly not for ten and a half years. However, whatever may be the case regarding general practice, the law in force in our Diocese is that followed by the R. Camera Spoliorum [Royal Chamber of Ecclesiastical Goods], according to which the beneficial year begins on the first of July and ends on the thirtieth of June. Since the Bishop's decision is contrary to both the practice that has been constantly observed in the Diocese of M., and to ecclesiastical law, the *orator* concluded his argument, demanding that the same decision either be annulled, or, if that is not possible, be reformed for the sake of equity.

DEFENSE OF THE BISHOP: On the other hand, the Bishop of M., as the aforementioned person had not correctly described the facts, as he himself said, corrected them, and refuted the objections raised concerning the practice and the ecclesiastical laws in force in the Diocese regarding this matter, maintaining that the scheme for the distribution of revenues was intended to avoid disputes and scandals among the contending parties, and that it was in conformity with the custom and the ecclesiastical law still in force in his Diocese. All of this was amply demonstrated by the Bishop, so that the decision and the arrangements might remain in force. He also showed that he had suspended both contending parties in order to prevent scandals, and not solely the parish priest, as the aforementioned person had stated. This suspension was not incurred by the mere fact itself, but after the Vicar General had presented the matter, and the contending parties were able to reach an agreement within a reasonable time, so that the parish would not remain without a pastor for too long.

[*Latin ed. p. 563*]

DIVISIONIS ET RESTITUTIONIS FRUCTUUM S63: It is clear that the parish priest, adhering to the new law, which, for the distribution of revenues, follows the civil year as a standard, owes nothing to the economist regarding these matters. Having stated this, the Bishop continues, explaining the distribution of fruits, beginning from the first day of July until the last day of June of the following year, and that this should remain so, unless circumstances suggest otherwise. However, since the present question appears to be difficult and complex, it is worthwhile to examine something in law for the sake of clarity. First of all, it must be noted that all fruits are considered by writers, both of civil and canon law, in a threefold manner. Some are civil, others are natural, others are industrial, and still others are mixed. Regarding civil fruits, it is taught that if a benefice becomes vacant due to the death of the beneficiary, their division must be done

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daily, as stated by De Rosa, Chapter 7, number 51, concerning the proper distribution of ecclesiastical revenues, and by Cardinal De Luca, Discourse 84, number 4, concerning benefices. However, if the vacancy occurs due to resignation, and this was simple and voluntary, the resigning party, unless a reservation preceded, seems to owe nothing, because it is presumed that he has waived it. But if it was a necessary resignation, the opposite rule applies. However, the aforementioned distinctions seem to apply only when dealing with a simple beneficiary who has only a lucrative interest. But if we are speaking of the possessor of a benefice who is also obligated to provide administration and service, a different opinion is taught by the esteemed Cardinal De Luca in the aforementioned discourse, 84, number 5 and following. Regarding natural fruits, as well as industrial or mixed fruits, it seems necessary to make a distinction. For these are either already separated from the land, although not yet collected, or are gathered in the barn or are pending. Concerning fruits that are separated from the land, but not yet collected, the Doctors hold different opinions. Some hold that they belong to the heirs of the beneficiary, while others hold that they belong to the successor in the benefice, as indicated by Thomas de Rosa, Chapter 7, concerning the proper distribution of ecclesiastical revenues.

[*Latin ed. p. 564*]

864. ON THE FRUITS OF DIVISION AND RESTITUTION. It is clear from Chapter 4 of the *Officium Ordinarii*, from Chapter 9 of the same work, in the 6th section, and from the *Institutiones* concerning the division of property, where these words are read: "He to whom the usufruct of a property belongs is considered the owner of the fruits only if he himself receives them. And therefore, if he dies before the fruits have matured, but not yet been received, they do not belong to his heirs, but are acquired by the owner of the property." This is consistent with the Constitution of Julius III, confirmed by Urban VIII in his Constitution "Aeternus rerum Conditor," in which the praised Pontiff decreed that the fruits of a benefice, which have not yet been received at the time of the beneficiary's death, are acquired by the successors in the benefice, and are not to be paid to the Reverend Apostolic Chamber. See the Sacred Congregation of Councils, in the case of the Veliterna Chaplains, May 26, 1722, §. However, there are not lacking certain authors who, setting aside any distinction between fruits, maintain that they are to be divided indiscriminately among the predecessor in the benefice and the successor, in proportion to the time and service that each has rendered. This opinion, besides appearing more consonant with equity, seems to provide more easily and effectively for the needs and for the proper support of the cleric who is appointed to administer the benefice in that year. Hear now what Pellegrini teaches on this matter in *Consilia*, 85, Vot. 4: "An ecclesiastical benefice is, in effect, nothing other than a certain heavenly service in the service of God for

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the ministry." Therefore, because "he who serves at the altar ought to live from the altar," and the fruits of benefices are destined for this purpose, the Doctors conclude, seeing the text in Matthew 12, that the fruits of the benefice, even if they have been entirely collected by the deceased Rector, say in the month of October, ought to be divided in proportion with the beneficiary, so that he too may live comfortably from those fruits, considering the revenues of the benefice until the next collection, for, as I said, the fruits of the benefice are due for the personal service and for the proper sustenance of the person serving, and are intended for that purpose.

[*Latin ed. p. 565*]

DIVISION OF FRUITS AND RESTITUTION 565. "The most equitable, indeed necessary, distinction is this: as is manifestly clear, the fruits of a deceased beneficiary do not produce all their benefits for the benefit of their heirs, but only in proportion to the time during which they served after the new [incumbent] has been appointed. Indeed, this opinion is not only consonant with equity, but also finds its foundation in the dispositions of the Holy Canons, as taught in *Clericatus* Vol. 1, *Discord. Forens.*, disp. 37, no. 6, citing *C. Videntes* 12, q. 1, cap., and *His ead. caus.* 12, q. 1, cap. ult. §. Furthermore, in *De Off. Ordin.*, *Extrav.*, *suscepti regiminis* 2, *de Elect. et Gier*, *potest. Barbato De divis. fruct.*, part. 2, cap. 8, no. 8, it is stated: 'The fruits are divided in proportion to the time during which the deceased beneficiary served among the heirs and successors; and this applies whether we are speaking of fruits that are due and outstanding, or even of those that have been received as if they were the fruits of a thing.' Add to this that ecclesiastical fruits were destined to be used to support the expenses incurred throughout the entire year until new [fruits] are available; therefore, it is reasonable that they should be divided in proportion to the time of service, considering equity."

Since this is the case, it is not surprising that the Holy See adopted it in *Constitutionum Capitularium* 24 January 1829, §. *Verum*. After being consulted whether the capitular constitution of the collegiate church of Montofortini, which stipulated that the division of fruits should be made in proportion to the service rendered, should be confirmed, after mature deliberation, it responded: "Affirmatively, with the approval of the Most Holy [Father]."

However, this opinion, although most in conformity with justice and equity, is subject to considerable difficulties. Indeed, if this rule is accepted, a new right will be created in this matter, which will deprive the late Popes Pius II and V, Julius II and III, Paul IV, and Clement VII, as well as the Reverend Camerae Spoliorum, of the benefits they have received, to which the aforementioned fruits were applied by right of spoliation, causing a serious injustice. However, it seems that this difficulty can be overcome by noting that this new rule should be introduced not by private opinions, but

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by the supreme authority of the Prince, so that neither common law nor the R. Camerae Spoliorum will be affected.

[*Latin ed. p. 566*]

566. OF THE EFFECTS OF DIVISION AND RESTITUTION: This injury is inflicted. Indeed, it pertains to the R.C. Spoliorum. For it seems that the rights of the R.C. Spoliorum are protected by the inclusion of the clause "saving in all respects the rights of the R.C. Spoliorum." With these premises established, the purpose was to determine whether the division of fruits made by the Bishop M. should be confirmed, rejected, or reformed in this case. RESOLUTION. After deliberation by the Sacred Congregation on January 28, 1882, it was decided to respond: The division of fruits made by the Bishop is to be confirmed and further elaborated upon. From these points, you will gather: I. According to the Canonists, an ecclesiastical benefice is a right to exercise a spiritual office, established by ecclesiastical authority, to which the right to receive its fruits is perpetually attached. II. Therefore, obligations and rights constitute the nature of benefices; so that these are inseparable, and just as the obligations are fulfilled, so too are the rights determined. III. Consequently, it is equitable and in accordance with reason that ecclesiastical fruits, destined to support the obligations for a full year, should be divided in proportion to the time of service, until new resources are obtained. IV. This opinion is also supported by the sacred canons, as can be seen in cap. Videntes 12, question 1, and cap. Ex his ead. caus. 12, question 1; in which it is stated that goods are given to the Church by the faithful, so that its ministers may live from the expenses of those same goods: for the law of God commands that those who serve at the altar may be fed from it. V. In this matter, according to this opinion, all fruits should be divided with the succeeding beneficiary; even if they were collected by the deceased rector, for example, in the month of October; so that he too may live comfortably from those fruits: for the fruits of the benefice are intended for his sustenance.

[*Latin ed. p. 567*]

SC 7. These [sums] are due for personal service, and for suitable sustenance for the person rendering the service. VI. Therefore, it ought to be in accordance with both equity and justice, that, when each one has borne the burdens of a benefit, he should, through that very thing, experience the advantages of that same benefit. VII. In matters concerning [this], the Congregation [of Rites] has followed this rule for dividing the fruits [of the benefice], which is considered by many to be more equitable and truer in law, when it declared that the opinion of the Bishop, who divides the fruits of the parish, should be confirmed, according to the time during which the service was rendered. (1) DIVISION AND RESTITUTION OF FRUITS. (1) See Vol. VIII, page 193. In the matter related there, the Sa-

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cred Congregation, rejecting a contrary custom concerning CALAUGURITAN, declared that all the fruits of the benefice, after deducting expenses, should be divided in proportion to the time during which the benefice was held. AND THE DECREE of CALCEATENSIS, concerning the feast of St. Joseph, occurring from Palm Sunday... THE MOST REVEREND BISHOPS OF CALAGURITAN AND CALCEATENSIS HUMBLY PROPOSED THE FOLLOWING QUESTION TO THE SACRED CONGREGATION OF RITES, NAMELY: The feast of St. Joseph, the Blessed Virgin's Spouse and Patron of the Catholic Church, which, by a decree of His Holiness Pope Pius IX, was elevated to the rank of a double first class feast, occurring from Palm Sunday until the sixth day of the week of the Lord's Supper, so that the feast of the Annunciation is transferred without command to be solemnly heard and from which the servants are excused, is it to be transferred according to the rubrics of the Breviary, or is it to be preferred to the feast of the Annunciation? THE SACRED CONGREGATION OF RITES, after hearing the opinion of another, with the Secretary present, and after considering the opinions of the Masters of the Apostolic Ceremonies, decided to issue a decree: Affirmative to the first part; Negative to the second part. AND SO IT DECREED AND ORDERED TO BE OBSERVED. ON MARCH 8, 1879.

[*Latin ed. p. 568*]

868 FROM THE APOSTOLIC PENITENTIARY: Declarations concerning those who are dispensed from the law of fasting due to age, labor, and infirmity of health. On February 24, 1819, the following question was presented to the Sacred Apostolic Penitentiary: "Whether the faithful, who are not obliged to fast due to age or labor, may licitly consume meats and dairy products during Lent, when an indulgence has been granted, on all days included in said indulgence, as permitted by said indulgence, as often as they eat in a day?"

The Sacred Penitentiary, having considered the matter on February 24, 1819, decided to respond: "They may."

The Bishop of Salford, having before his eyes the aforementioned resolution, proposed the following question to the same Sacred Penitentiary: "Whether those who are dispensed from the law of fasting due to infirmity of health may, on those days for which the consumption of meat is permitted by indulgence, consume meat more frequently in a day?"

The Sacred Penitentiary, having carefully considered the proposed question, decided to respond on March 16, 1882: "The faithful, who are excused from the law of fasting or from a single meal due to infirmity of health, may licitly, on the days of Lent for which the consumption of meat is permitted by indulgence, consume meat as often as they eat in a day."

Given in Rome, in the Sacred Penitentiary, on March 16, 1882.

(1) (1) These two declarations were taken from the archive of the afore-

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mentioned Sacred Penitentiary.

[*Latin ed. p. 569*]

S69 A SUMMARY OF THE ACTIONS CONTAINED IN THIS FOURTEENTH VOLUME: LETTERS AND RESPONSES OF THE ROMAN PONTIFF. Encyclical of the Most Holy Pope Leo XIII concerning the Political Principate, page 3. Apostolic Letters of the Most Holy Pope Leo XIII, by which the episcopal hierarchy is established in Bosnia and Herzegovina, page 97. Letters of the Most Holy Pope Leo XIII, addressed to all the Bishops of Belgium, page 145. Response of Leo XIII in an address given before the same Prelates who had convened in Rome, for the purpose of a solemn canonization, page 241. Letters of the Most Holy Pope Leo XIII to the Archbishops and Bishops of the ecclesiastical provinces of Milan, Turin, and Vercelli, page 289. Encyclical Letter; in which the Holy Pontiff exhorts the Bishops of Italy to strive so that the Catholic faith may not be destroyed; especially by fostering Catholic societies, by instituting ministers of God, suitable in virtue and knowledge, and above all, by attending to the seminaries of clerics. Page 289. Letter of the Most Holy Pope Leo XIII to the Archbishops and Bishops of Sicily; in which he laments the injuries inflicted upon the Church and the Holy Pontificate by impious men who convened in Palermo, page 337. Apostolic Letters; concerning the reform of the Order of Saint Basil the Great in the Ruthenian Nation of Galicz, page 433. Apostolic Letters concerning the celebration of the sacrifice of the Mass for the people by Bishops, page 481. FROM THE CONSISTORY ACTS. Address of the Most Holy Pope Leo XIII, in which he expresses his sorrow concerning the nefarious events that occurred in the City, when the remains of Pius IX were profaned; he speaks of the ecclesiastical hierarchy established in Bosnia and Herzegovina, and of the confirmation of the Armenian Patriarch of Cilicia, page 49. Propositions of the Bishops, page 49. Concerning the Consistory held on November 18, 1881, page 54. Concerning the Consistory held on March 27, 1882, page 193. FROM THE HOLY CONGREGATION OF THE COUNCIL, various questions are elucidated concerning the nature, collation, and administration of the pious legacy, page 15. Of the bequests of the deceased, page 15.

[*Latin ed. p. 570*]

S 70. Dispensation regarding certain ACTIONS arising from irregularity; a cleric who is unable to bend his left arm seeks dispensation from an irregularity arising from a defect in his body.

22. Erection of a Hospital; the Apostolic See requests the occupation of a part of the Church property for the purpose of erecting a hospital.

24. Marriage; it is debated whether a marriage can be declared null, due to the wife's impotence, or whether a dispensation should be granted regarding a valid marriage.

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58. Marriage; due to the impediment of clandestine marriage, a marriage begun in a private house of a certain priest is declared null, without the license of the parish priest or ordinary, although the legitimacy of the offspring received remains.

69. Interpretation of a Rescript; a canon who has obtained an indulgence from choral service is obligated to perform weekly duties and to celebrate conventual Masses, or on weekdays or vigils, within three years?

80. Residence and Suspension; an economist-curate, without consulting the Bishop, takes possession of a parish in a different diocese; can he be compelled by ecclesiastical censures to return to his own diocese?

113. Suspension; due to the gravest irreverence and a scandalous libel against the Ordinary, the Dean of the Chapter is suspended from office, and some canons are deprived of their active and passive voice, at the discretion of the Holy See.

122. Validity of the Chapter; a chapter session is considered illegitimate by some canons, because not all were notified, and the matter to be discussed was not made known three days in advance.

130. Regarding Precedence and the Right to Offer Respect; the prelate attempts to claim precedence over others, after the Cathedral prelate, and also the right to offer respect with the cross in processions in which the Cathedral Chapter participates.

136. Marriage; it is requested that a marriage, which is valid but not consummated, be dissolved by the authority of the Pope; but this request was denied.

148. Marriage; it is declared that there is no proof of the nullity of a marriage, even though there was doubt that it was validly dispensed from the impediment of affinity, arising from the union of the parties.

155. The Cross; a canon, for fear, does not participate in the choir; but he requests the fruits and distributions for the entire period of his absence: did he have a just reason for abandoning his residence?

167. Reintegration into the Parish; a removable parish priest requests to be reintegrated into the parish in France, because he was removed without a canonical reason, without a sentence or a legal investigation.

172. Translation of a Suspension, Excommunication.

[*Latin ed. p. 571*]

SUMMA ACTORUM: A priest, due to damages and expenses, appeals to the Holy See, requesting that he be reinstated in his parish, despite the decrees of the Bishop and a judgment rendered based on informed conscience. 178

Indulgences: A canon, due to illness, is excused from singing in the choir. 201

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Pensions: The parish priest refuses to pay the pension to the curate of the archpriestal parish, arguing that this pension was established through the favor of the archpriest. 203

Emoluments of funerals: A parish priest of a rural area is excused from the restitution of funeral emoluments, with the favor of the city parish priest, because the deceased was considered to have had a principal domicile in the rural area. 209

Peculiarities: A dispute arises as to whether the administration of a pious endowment should belong to the Rector of the Church, to whom a legacy for pious Masses was left, or to the priest who was passively called to celebrate those Masses. 242

Parochial rights: A dispute arises between members of a confraternity and the parish priest regarding the functions to be performed by the chaplain of the confraternity, independently of the parish priest. 251

Voluntary commutation: The heirs of a testator receive the pious endowment for its administration, with the faculty of using a portion of its fruits. 209

Salisbury: Absolution and remission: A descendant of a pious testator, impoverished by poverty, receives absolution from unfulfilled obligations and remission thereof for the future. 261

Dispensation from irregularity: A deacon afflicted with epilepsy requests and obtains absolution from irregularity. 264

Reintegration into the parish: It is doubted whether a decree rendered based on informed conscience can be sustained. 292

Dispensation from marriage: It is doubted whether a dispensation can be granted for a marriage that has been consummated, so that a dispensation can be requested regarding a valid marriage. 315

Marriage: The wife argues for the nullity of a marriage contracted before a priest who was not the priest of any particular parish. 320

Masses for the people: The parish priest asks whether he can follow the custom of entrusting another priest with celebrating a Mass for the people. 332

Bologna: Interpretation of a rescript: An authentic declaration is requested, to determine whether the right to conduct funerals to the public cemetery pertains to all parish priests of the domicile of the deceased in a hospital, or only to the parish priest within whose parish limits the hospital is located. 346

Dispensation from marriage: It is asked whether a dispensation can be requested for a marriage that has been consummated but not consummated. 355

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Appeal: It is doubted whether seven...

[*Latin ed. p. 572*]

872 SUMMA. ACTORUM ex quindecim canonicis Capituli appellare valeant, dum octo (inter quos est Antistes uti canonicus) acceptant sententiam Curiae episcopalis, respicientem Capituli negotium. 362 Suspensionis, irregularitatis et privationis; haeredes exposcunt ut declaretur nullum legatum missarum a proprio avo, testandi capacitate destituta, relictum. 417 Institutionis; Sacerdos descendens a fundatore ex linea feminili, exposcit institutionem in beneficio, quam sibi Episcopus denegat. 423 Mediolanen, funerum et emolumentorum; quaestio est an exemptionis iure frui valeat domus hospitalis, nuper erecta Mediolani a religiosis s. Ioannis de Deo. 436 quaeritur an sustineantur decreta suspensionis et irregularitatis ab Episcopo lata et an sententia Curiae episcopalis, qua parochus paroecia privatur, invalidatio sit. 372 Absolutionis et reductionis; exposcitur reductio oneris Missarum, et absolutio pro tempore anteacto. 378 Dispensationis; dispensationem ab aetate exposcit iuvenis, ut recipi queat in Seminario, istius expensis alendus. 382 Ordinationis; quaestio est an Episcopus conferre valeat primam tonsuram sine testimonialibus litteris Episcopi originis, accedente tamen istius consensu. 392 Decreti; dubium est an confirmandum vel infirmandum sit Episcopi decretum, quo suspenditur ab excipiendis confessionibus sacerdos, qui monita et mandata Antistitis spernit, quique fomes est tumultuum et simultatum inter oppidanos. 404 Matrimonii; dubitatur an nullum sit matrimonium propter cognationem spiritualem, ex confirmatione contractam inter coniuges. 411 indulgetur clerico gratia figendi suum domicilium in aliena Dioecesi, ad hoc ut ordinari possit, dum proprius originis Episcopus litteras testimoniales dare eidem renueret. 443 Auocitana administrationis sacramentorum et funerum; confirmatur antiqua consuetudo, qua fit ut hebdomadarius Capituli, loco parochi, administrat sacramenta canonicis aegrotantibus in qualibet civitatis paroecia, et exequias peragit canonicis obeuntibus in paroecia Metropolitanae. 447 Remotionis impedimenti; conceditur facultas ineundi matrimonium filiofamilias, cui mater interposuerat formalem dissensum. 455 Nullitatis matrimonii; dubium est an matrimonium nullitate laboret, utpote quod vi metuque contractum referatur. 458 Nullitatis ordinationis paroeciae; legati seu absolutionis; Ordinationis seu iurium excardinationis; et privilegiorum.

[*Latin ed. p. 573*]

SUMMA ACTORUM: The parish priest judged that it was not the right of the members of the sodality to administer the goods of the sodality, nor to choose a chaplain who, independently of the parish priest for the time being, could celebrate Masses for the living and the dead, and perform the usual functions in the oratory of the confraternity.

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467 Dispensation from marriage: A woman, misled by a false opinion, gave her consent, but did not understand that she was giving her body; therefore, the dispensation concerning a valid but unconsummated marriage is revoked.

487 Reintegration into the parish, or compensation for damages: The college of hebdomadarians, considering the Regular Order suppressed, seeks to reclaim the care of souls, which had been entrusted to it for a long time.

494 Deprivation of the parish: The parish priest, persevering in the vice of concubinage, causes the parish to be perpetually deprived [of certain rights].

501 Dispensation from irregularity: A dispensation is granted to a cleric because of the absence of the primary phalanx of the little finger of the left hand.

507 Renunciation of the parish: The parish priest is denied permission to send messengers to the parish because of a lack of reasons.

509 Romana: Doubts concerning the application of the Mass for the people.

536 Division of parochial revenues: There is a dispute as to how such revenues should be divided between the predecessor and successor in the parish.

556 573 Division and restitution of fruits: The predecessor parish priest appeals from the sentence of the Bishop, who divided the parochial revenues between him and his successor according to the calculation of the ecclesiastical year.

560 FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS: Concerning pensions: It is asked whether and how the decree *Cum superrimis* can be applied with regard to the pension of the episcopal mensal.

29 Reduction: Concerning the reservation of a pension: The question is whether the pension is maintained by the Ordinary on the parochial benefice, under the condition of Pontifical approval; which, if the Ordinary dies, is unknown whether it has been granted.

85 Decree: By which it is declared and established that Regular Canons and students of Congregations who have taken simple vows, expelled from their cloisters in Gallia, are bound to obey the Ordinaries in whose dioceses they reside, even in the performance of sacred duties, and especially in the exercise of the care of souls.

91 Concerning the right to collect alms: The Fathers of the Passion of Our Lord Jesus Christ claim the right to collect alms in the city and territory, in which the PP. Capuchins have done so since the year 1626, having obtained Apostolic permission.

267 Taurinen, and Montis Pessulani: Concerning the non-observance of

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an Apostolic decree.

[*Latin ed. p. 574*]

674 Regarding the faculty of hearing the confessions of religious; it is inquired whether a member of the Congregation of the Missions can, without the permission of the Superior, validly administer sacramental confession to an external priest.

271 Parisien, concerning the Congregation of the Missions with regard to vicars and apostolic prefects; it is inquired whether those who are marked by the episcopal order have the right to active and passive voice in the election of the General Superior.

426 From the SACRED CONGREGATION FOR RITES, concerning the prohibition of suspending votive tablets that refer to a less honorable part of the body.

92 Decree; Lima, concerning the beatification and canonization of the venerable Servant of God Francis Camacho; a religious professed of the Order of St. John of God.

94 Instruction concerning the use of sacred vestments made of cotton, linen, or wool.

144 Decree; Rome, or rather, January, concerning the canonization of the blessed John Baptist de Rubeis, confessor, Canon of the Collegiate Basilica of St. Mary in Cosmedin.

188 Decree; Brundusina, concerning the canonization of the blessed Lawrence of Brundusio, a priest professed of the Order of the Minor Brethren of St. Francis, the Capuchins.

190 Rhemen; after a previous, acute, and learned discussion, the confirmation of the Decree is issued, concerning the cult rendered to Urban II, the Pope, now called saint and blessed.

217 Spoletana; concerning the canonization of the blessed Clara of the Cross of Montefalco, a nun of the Order of the Eremites of St. Augustine.

235 Decree; by which the Most Holy Father solemnly declares the blessed John Baptist de Rubeis, Lawrence of Brundusio, Benedict Joseph Labre, and the virgin Clara of the Cross to be saints.

238 Offices of St. Thomas Aquinas; new historical readings for the second nocturne.

239 Compendium of the life, virtues, and miracles, as well as the acts in the cause of canonization of the blessed Benedict Joseph Labre.

275 Decree, Augustana in Pedemonte; concerning the confirmation of the cult rendered from time immemorial to the Servant of God Emeric of Quart, Bishop of Augsburg, now called blessed.

336 Salfordien; concerning the permission to perform thurifications in Mass with singing, but without sacred ministers.

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480 General Decree; by which it is prescribed that it is not permitted to sing a Mass for the repose of the souls on the anniversary of the dedication of the church, nor in the presence of a corpse.

480 Sulmonen; concerning the raising of the cross; the question is whether the clergy, constituted in a college, have the right to raise the cross in funeral associations.

Pictavien; ...

514 Beatification and canon-

[*Latin ed. p. 575*]

SUMMARY OF THE acts of the venerable Servant of God, Andrea Huberli Fournet, priest, founder of the Congregation of the Daughters of the Cross, commonly called the Sisters of St. Andrew, 527, or the Order of Preachers, concerning the confirmation of the worship rendered from time immemorial to the Servant of God, Bertrand de Garrica, priest, professed of the same order, and now called "holy and blessed," concerning the decree regarding the feast of St. Joseph, beginning with Palm Sunday, etc. 567 FROM THE DECREES of the Holy Congregation of the Index, in which various books are prohibited. 37 Decree, by which several books are prohibited, and two doubts are resolved concerning books dismissed and not prohibited by the Holy Congregation of the Index. 287 Decree, by which several books are prohibited. 473 Two FROM THE PUBLICATIONS of the Vicariate of the Eminence of the Vicar, concerning the sacrilegious commerce of false relics. P 39 LETTERS FROM THE HOLY CONGREGATION of the Sacred Roman Universal Inquisition, declaring that no dispensations from marriage are granted, insofar as a clandestine incestuous union has been entered into between the betrothed. 431 General Decree concerning the nuptial blessing. 513 Decree; ([u o FROM THE HOLY APOSTOLIC Penitentiary, to the Bishops of Europe, the faculty is granted of postponing the Jubilee until the eighth day of the coming month of December. 143 Declarations concerning those who are dispensed from the law of fasting for reasons of age, labor, and infirmity. 5(58) APPENDICES, in which more decrees of the Congregation of Rites are referred to. 41 Appendix II; concerning the parish churches in France after the Concordat of the year 1801. 181 Appendix III; concerning the suspension of the Appendix based on informed conscience. 299 Concerning testimonial and dismissal letters, and the reasons for which a Bishop is properly related to the religious orders. 398 Appendix V; concerning the burden of applying the Mass for the people, recently imposed on the Bishops, and concerning various resolutions of the Sacred Congregations concerning this burden. 549 Appendix I V.

[*Latin ed. p. 576*]

576 INDEX GENERALIS. The following conclusions are included under the subsequent words: Age concerning entrance to the Seminary.

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Appeal. Benefice concerning institution. Apostolic approval. Chapter concerning convocation. Confraternity. Crosses concerning elevation. Damages concerning repetition. Choral distributions. Bishop concerning confessions. Mass for the people. Bishop concerning the Mass for the Parish concerning privation of the people. Pension. Beneficial fruits concerning division. Apostolic privilege. Joy. Religious concerning confession. Parochial rights. Residence. Pious legacy. Suspension from informed knowledge. Marriage. Testament. Marriage concerning spiritual kinship. Age concerning entrance to the Seminary. From the Council of Trent, Session 23, chapter 18, concerning reforms, it is declared that one is incapable of entering the Seminary if he has not reached the twelfth year of his age, unless he is to be supported at the expense of the Seminary. page 384. From a recent declaration of the Sacred Congregation, it has been declared that it suffices that the twelfth year has begun for those who are supported free of charge in the Seminary, but not for others, and this is included in the Tridentine law. ibid. Appeal. That which is decided by the majority and more sound part of the Chapter should be understood to have been decided by the entire Chapter, and no appeal should be admitted, and it prevails, the appeal removed. page 371. A canon, detained at home due to infirmity, can, in all more serious matters of the Chapter, give his vote through a procurator; indeed, according to some doctors, even one not impeded by a legitimate cause, can appoint a procurator in all matters, except for the matter of election. ibid. Benefice concerning institution. All wills must be observed in every respect, all rights proclaim, when they expressly admit or exclude certain persons from succession in the patronage right. page 426. Those who enjoy the passive right, and are considered to be named by the founder himself, are subject to their own right.

[*Latin ed. p. 577*]

577 It is an obligation, requested with due caution and with the explicit approval of the Holy See, that this [obligation] is not excused from its execution from the day on which he was received into the possession of the parish; with the condition that, if the Pope grants a dispensation, it is retroactively applied to the time of the contract, ibid. Therefore, when in the case of the imposition of pensions, a clause was added with the express consent of the Holy See. However, when the imposition of pensions is done only by grace, and with the express consent of the Holy See, it is stipulated that a portion of the pensions is to be remitted. Ibid. The General Index may contain entries that are overlooked by the compilers, ibid. The Council of Trent states: In the collation of benefices, nothing whatsoever should be deducted from the qualities and certain burdens that were required or established in the erection or foundation of those same benefices, ibid. Since some benefices are to be conferred upon certain persons, or a certain class of

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persons, therefore the collation of these benefices is considered necessary, ibid. The Apostolic Beneplacitum. The obligation that a parish priest undertakes when accepting a parish is valid, with the reservation of the Apostolic Beneplacitum, page 90. The opinion prevails that contracts entered into with the reservation of the Apostolic Beneplacitum are generally valid in themselves, provided that possession has not been formally transferred, ibid. The Apostolic Beneplacitum can also be obtained through prayer, and such an oracle, once granted, remains valid in law, ibid. Although there may be no testimony of the obtained oracle, yet sometimes, as in the case, considering the dignity and teaching of the one who has undertaken the contract, it can be presumed that he has obtained the grace that he had promised to seek through the oracle of a living voice, ibid. Concerning the appointment of a parish priest, Volume XIV, page CLXVIH, Chapter regarding the convocation. Chapters have a corporate nature: therefore, their actions are explained socially, or as is commonly said, capitularly, in assemblies; to which all should be invited, so that they may be considered legitimately assembled, page 135. The right to convene a chapter belongs to the president, or to the highest dignity of the Chapter; which may vary according to local custom and the decree of erection of the chapter, ibid. According to what is decreed by the 25th Session, Chapter 6, of the Council of Trent, a Vicar of the Bishop cannot convene a Chapter, nor can he prevent its convocation, even in the absence of the Bishop, ibid. Since all canons must be present at the chapter assemblies, so that the resolutions reached are not invalidated by force; therefore, even if one of those who are to be summoned is absent,

[*Latin ed. p. 578*]

INDEX GENERALIS 578. If someone has been called and has not been present, the capitulars, being infirm, may raise the single cross; and then, whether he claims to have been overlooked or not, the cross of that church must be carried, to which the funeral is being taken, as is fitting. See *ibid.*, question 526.

Numerous confraternities exist. After the decree of the City and the World, issued by the Congregation of Rites in the year 1703, judges are appointed to resolve questions between parishes and confraternities; but it cannot be denied that these same confraternities retain the faculty of choosing their own chaplains, who perform all the functions in their chapels, independently of the parish priest. See *ibid.*, page 477.

Besides these rights and privileges which every sodality possesses, canonically erected, it also obtains, by the decree of the City and the World, and this is maintained by communication, which was granted to the Archsodality, at least for a hundred years. See *ibid.*

The force of an immemorial custom is such that it can supplement the just reason, so that a better argument may be made; and whatever is con-

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trary to the law, it suffices in those things, and it has the resistance of the law; and the clause of revocation, notwithstanding any custom, is not included in the immemorial custom. See *ibid.*

Against these rights and privileges of sodalities, which are apart from common law, no obstacle can be placed, nor can the statutes of the Ordinaries, nor the constitutions of particular synods; as if they were to imply a prejudice to the supreme authority of the Apostolic See. See *ibid.*

Regarding the raising of the crosses, it is certain by law that in funerals... See *ibid.*, page 527.

[*Latin ed. p. 579*]

INDEX GENERALIS

Et de iure communi in funeribus: unica esset deferenda Crux, nempe Ecclesiae lumulantis; tamen ius a consuetudine modificari potest ita, ut Card. De Luca ad rem dixerit: « Regula est, ut omnes sub unica cruce incedant, nisi consuetudo aliter statuat. » Ibid.

Damna quoad repetitionem: Is, qui agit ad repetenda damna, primum evincere debet uti certum, commodum et lucrum quod amisisse queritur; praeterea amissionem ex eius facto derivare, a quo indemnitatem petit. p. 500. Damnum haud intulisse dicitur, qui facit aut omittit, quod facere aut omittere ius habet; et ideo nulla querela damni adest, etsi ex hoc alteri damnum obvenerit. Ibid.

Distributiones chorales: Nulla est excusatio vani timoris; sed solummodo metus cadens in virum constantem excusare potest canonicum ab onere residendi. p. 172. Ad constituendum metum legaliter iustum, et cadentem in virum constantem, nedum requiritur quod malum sit in se magnum et grave, sed etiam quod metuens non possit facile illud depellere. Ibid.

Impotens ad resistendum censetur, qui huic metui occurrere nequeat: etenim verificatur impotentia, quando absentia non est voluntaria, seu quando non potest per beneficiatum, quominus resideat. Ib.

Episcopus quoad confessiones: Sacerdotes tam saeculares, quam regulares, in his quae curam et sacramentorum administrationem concernunt, omnimodae inrisdictioni, visitationi et correctioni Episcopi dioecesani, nullo suffragante privilegio, subiiciuntur, p. 410. Ideoque in facultate Episcopi positum est concedere, negare et limitare facultatem audiendi sacramentales confessiones; et amovere confessarios, etiam regulares, iam approbatos, quos viderit haud se gerere integre et cum aedificatione, ceu sanctitas ministerii, eisdem commissi et animarum salus deposcunt, ibid.

Etenim neminem latet, talem esse debere confessarium, quem vitae integritas, doctrina, prudens iudicium omnibus commendet; et quod

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cuiusvis vitae aspectus spectatur, restat ut omnia spiritualia, ab eo exhibeantur. Ibid.

Episcopi possunt rationabiliter praepedire ne missa aliqua celebretur ante missam parochialem, quatenus videant populos retrahi a missa parochiali et concione in ea per parochum haberi solita, et eam contemnantur. Ibid.

[*Latin ed. p. 580*]

680 INDEX. The Bishop concerning the Mass for the people. Although it had not yet been definitively established, either by divine or human law, how often or on which days Bishops ought to celebrate the Mass for the people, this duty was nevertheless always considered to be among the most important of the duties of Bishops, page 547. For the obligation of celebrating the Mass for the people arises from the very nature of the office of caring for souls; therefore, it rightly follows that this obligation is greater for Bishops, because the care of souls, by virtue of the episcopal consecration, properly belongs to them, and constitutes their condition, dignity, and rank, ibid. For every priest is taken from among men, that he may be for men in the things that concern God, that he may offer gifts and sacrifices for sins... And therefore, he ought, just as for the people, so also for himself, to offer for sins, ibid. Nor can a Bishop exempt himself, according to Saint Thomas, when he entrusts the care of a parish to priests: for it still pertains to him to have care for the entire flock entrusted to him, from which the Apostle said of himself in 2 Corinthians 11: "Besides those things which are outward, my daily care is for all the churches," page 548. In order that doubtful questions might be avoided, and that the uniformity of discipline might be maintained, the Apostolic See decreed that all Bishops of the Eastern and Western Churches, even as parish priests, should be bound to celebrate the Mass for the people on all Sundays and other feast days, both by command and on days of devotion, ibid. However, from recent apostolic letters, it is understood that pastors of souls will sufficiently fulfill this office by celebrating and offering one Mass for the entire people entrusted to them, even if they equally govern two or more dioceses and abbeys, ibid. It is also understood that Bishops celebrating the aforementioned Mass for the faithful of their diocese do not fulfill the obligation of celebrating the Mass for the people of their parish, if they have a parish, ibid. Vicars Apostolic are also bound by this obligation, those residing in places where episcopal sees have already been canonically established, and who have been sent to those places to perform the duties of legitimate pastors, ibid. Fruits concerning the division of Ecclesiastical Benefices. According to the Canonists, an ecclesiastical benefice is the right to exercise a spiritual office, established by ecclesiastical authority, to which the right to receive the fruits is perpetually annexed, page 566. Therefore, obligations and rights constitute the nature of benefices; so that these are determined by them,

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and the fulfillment of the obligations determines the rights, ibid.

[*Latin ed. p. 581*]

INDEX GENERALIS; Hence, it is fitting, with due equity, that the ecclesiastical revenues, destined to support the expenses of the year, should be divided in proportion to the time of service, until new arrangements are made, ibid. This opinion is also derived from the most holy canons, from chapter Videntes, question 1, and from chapter Ex his in quibus it is said that goods are given by the faithful to the Churches, so that the ministers of those Churches may live from the expenses of those same goods: for the law of God commands that those who serve at the altar should be fed from it, ibid. Regarding this matter, according to this opinion, all the revenues should be divided with the succeeding beneficiary; even if they were collected by the deceased rector, for example, in the month of October; so that he too may live comfortably from those revenues; because the revenues of the benefice are due for personal service and for the proper sustenance of the person serving. p. 567. Therefore, not only is it in accordance with equity, but also with justice, that he who has borne the burdens of the benefice for a certain time, should also enjoy the benefits of that same benefice, ibid., cause 12, reply 1.

Jubilatio [Jubilee]: It is derived from Benedict XIV that he who holds a jubilee has the right to all the revenues of the prebend, as long as he is no longer obliged to attend the choir, nor to reside in the place where he obtained the choral benefice, Dioec. 1.13, chapter 9, number 15, p. 58. However, the grant of jubilee is given as a reward for forty years of choral service, diligently performed; and when this service ceases, so too does the reason for this remuneration, ibid. He who receives such a grant is exempt from all canonical burdens and functions; so that he is not obliged, either by himself or by another person, to fulfill them, ibid. However, special circumstances may sometimes arise that prevent the grant from having full remuneration, and that it may accept certain limitations, ibid.

Parochial Rights: From chapter Is. qui 3 De Sepult. the parish priest has the right to assist at the funerals of the deceased within the limits of his parish, by reason of his spiritual office, exercised by the same parish priest, as long as the parishioners are alive, p. 215. For parishioners are called, with regard to burial, those who live within the limits of the parish, so that they are obliged to receive the sacraments while alive in that place, and the parish priest is obliged to administer them to them, p. 216. The parochial office does not seem to be properly attached to a place, but is founded on the persons of the parishioners; so that whatever they do, the rights of the parish priests over them remain complete, ibid. And therefore,

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he who works in the countryside, or in the town,

[*Latin ed. p. 582*]

INDEX GENERALIS: A person who dies outside their parish, and is not to be buried in the countryside, but must be referred to the parish of the city, to whose parish priest the right of burial belongs, ibid. And so it appears to be the common opinion of the Doctors, that this is the case whenever parishioners are away from their parish for the purpose of burning, or for the sake of office, study, or military service, without the intention of remaining there and establishing a domicile. ibid. However, things are quite different when a person has a double domicile; that is, in the countryside and in the city, so that they spend an equal amount of time, now in one place and now in the other; because then they must be buried in the parish in which they died, ibid. For in this case, that person is equated with one who has a principal domicile in two places; so that they are a parishioner of both parishes, and must be buried in the parish in which they die, which for that time is considered their true parish, ibid. From the decree of the Congregation of Sacred Rites, it is gathered that agreements, pacts, and concordats entered into between parties have such force that the law itself must yield to them, as it is written in the aforementioned decree: "provided, however, that... agreements entered into between the parties are preserved." j 9. 258. The assistance of the law in burials belongs only to the proper parish priest of the deceased person, by reason of the mutual necessity by which the priest and the parishioners are bound to each other, with regard to the administration of the sacraments and their reception. p. 353. For while the priest is burdened with the duty of providing the sacraments to his parishioners, these, in turn, are bound to receive the same sacraments from the priest; from this mutual necessity arises the parochial bond, ibid. Therefore, the priest is assisted by the law not by reason of the material location, or of residence, or of accidental death, but by reason of the spiritual office: or because the priest has provided spiritual things to the parishioner while he was alive, ibid. Therefore, since the priest, by necessity, administers the sacraments only to his own parishioners, he can only intervene in the funerals of these, and not in the funerals of other deceased persons in the hospital, which is located within the limits of his parish; because by their death in that place, they do not become subject to him, ibid. The office and jurisdiction of the priest are not tied to territory, but are attached to the persons of the parishioners; from which it follows that the priest, while he has every right over his own parishioner, wherever he may be, has no right over his own parish concerning a parishioner who is not his. ibid. With regard to this, the proper priest has the right to solemnly conduct the funerals to the public cemetery, whenever his own parishioners, dying in the hospital, have chosen a burial place outside of it; because they have not changed their parish, from which the sick were brought to the hospital.

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ibid.

[*Latin ed. p. 583*]

583 GENERAL INDEX

Legacies pious: In many respects, ecclesiastical benefices differ from pious legacies and from lay chaplaincies, page 21. However, the essential difference between ecclesiastical benefices and other pious bequests lies primarily in this: in the founding of ecclesiastical benefices and chaplaincies, a decree of erection and a canonical institution are entirely required; these are not required for pious legacies or lay chaplaincies, page 22. Lay chaplaincies and pious legacies differ little from each other; hence, they are often considered as pious legacies, ibid. Benefices and pious legacies are presumed to be perpetual, unless the contrary is clearly demonstrated from the will of the testators, or because the Supreme Pontiff has removed perpetuity and introduced manual labor, ibid. The wills of testators, especially concerning pious causes and foundations, are held as law; thus, only the Supreme Pontiff, with a just cause, can change these wills and foundations for other uses or purposes, page 250. When a pious testator has not specified the number of Masses nor the amount of alms to be given, it seems to follow from his presumed will that as many Masses should be celebrated for the repose of his soul as are possible with the revenues of the bequeathed property, according to the diocesan assessment, page 251. Testimonial Letters: Since each person must be ordained by his own Bishop, no tonsure, nor the holy orders, can be conferred by an external authority, unless the probity and morals of that external authority are attested by testimonial letters from his own Bishop, page 397. It seems to have been established by the best of laws to avoid disagreements between Bishops (among whom mutual veneration and reverence ought to be fostered), and so that unworthy individuals, rejected by their own Bishops, may not be promoted to the sacred orders by others, ignorant of their unworthiness, to the detriment of their souls and to the disgrace of the ecclesiastical order, ibid. Such testimonial letters are required by law in such clear terms that no other remedy can suffice: where the law does not distinguish, neither must we distinguish, ibid.

Marriage: In addition to other requirements, the mingling of seed and a suitable union for procreation are required, so that a man and a woman, through carnal union, become one flesh; and so that the marriage may be said to be consummated, page 68. Therefore, impotence is considered to be the inability of a man to penetrate the female organ, even if he emits semen into it, ibid.

[*Latin ed. p. 584*]

684 GENERAL INDEX: A perpetual absence of menstruation in a

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woman indicates an impediment to marriage, ibid. Dispensations granted by the Apostolic See are sought for the good and decorum of the sacrament of marriage, for the spiritual well-being and peace of the spouses; for those who, by name and by right of marriage, would have an opportunity for incontinence, given the danger of impotence, and would thereby encourage sin, ibid. Where the decrees of Trent were published, marriages that were begun without the proper parish priest, or priest with the license of the parish priest or ordinary, and without at least two witnesses, are to be declared null and void, page 79. The proper parish priest cannot be present whenever the domicile, or quasi-domicile, of the contracting parties is lacking, ibid. There is no doubt about the legitimacy of the children born from an invalid marriage, whenever good faith was present in the celebration of the same marriage, on the part of at least one of the contracting parties, page 80. Since marriage, by its very nature, is a firm and irrevocable state, generally error and deceit cannot invalidate the validity and perpetuity of the same sacrament, page 184. For the consent, which is the efficient cause of marriage, regards the person, not its qualities; and the will of the contracting parties absolutely consents and independently of other conditions, except those which are of the substance of the same contract, ibid. The Roman Pontiffs use the power to dissolve valid marriages as a remedy to avert grave harm to the Church, to prevent quarrels and murders among families, which often arise from ill-advised marriages, ibid. But any cause is not sufficient; a very serious reason is required in order for the Pope to use this authority, which he usually uses for the governance and good of the Church, p. 155. Therefore, in practice, it seems necessary to consider whether the requested dispensation from the Apostolic See contributes to the common good of the Church, or whether it is more likely to cause harm due to future scandals that it may generate, ibid. Therefore, the response of Alexander [I] in Chapter 3 concerning a woman, who, after a certain time, has a return of menstruation, even if it was absent for two years, seems appropriate: "It is not permissible to marry; and if a marriage has taken place, it must be separated; and as soon as the carnal union returns, ecclesiastical separation must be compelled," ibid. Besides the faculty granted by the Holy See to Bishops in the Penitentiary to dispense over the hidden impediment from an illicit union, according to the opinion of Doctors, Bishops, by extraordinary right or by tacit concession of the Pope, have the faculty to dispense their subjects over the same impediment, if necessity demands, page 166.

[*Latin ed. p. 585*]

INDEX (Concerning matters pertaining to marriage). By the mercy of God, sentences favorable to marriage, which have already passed into a final judgment, can be reopened in judicial controversy, if a new fact is revealed which was not presented or was ignored, ibid. Since restoration

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to the previous state is a benefit granted by law to prevent fraud and errors in judgments and contracts (585), it is generally not granted unless the injustice of the res judicata is demonstrated, arising from false documents attached to the judgment, or from a law that was disregarded and openly violated, ibid. For a marriage to be validly entered into, it suffices to have quasi-domicile; for establishing this, not civil laws, but the sacred canons must be considered: and since it is the duty of one Church to establish the laws that pertain to marriage, page 332. Marriage is validly contracted before the proper pastor, who becomes such through domicile, ibid. For quasi-domicile, acquired for the purpose of marriage, two things are required: actual residence in the parish, and the intention of maintaining that residence for the greater part of the year, ibid. However, in doubtful cases, when it is not sufficiently clear whether there is an intention of remaining for the greater part of the year, presumptions are used. Indeed, it is presumed that the Supreme Pontiff delegates the power to grant dispensations to the Bishop, when such urgent circumstances exist, in which neither the Supreme Pontiff nor his advisors can deliberate, nor can the marriage contract, to which everything is arranged, be postponed without scandal, and to the shame of those preparing for marriage, ibid. The common opinion of Doctors holds that, while the impediment is materially public and formally hidden, the clause is verified – namely, while the impediment is hidden – which is usually added by the Sacred Penitentiary when granting permission, page 167. An impediment is considered hidden even if the fact itself is known, but the impediment is ignored according to the nature of the impediment; or the impediment is not public, in the sense that it is known only to two or three people, ibid. Even if two sentences are in agreement concerning the nullity of a marriage, they never become a final judgment, due to the privilege granted to matrimonial causes, because marriages ought to be indissoluble, page 331. A presumption is sufficiently firm for judging the intention of remaining... if the person contracting marriage has resided in the place where the marriage is celebrated for at least one month before the marriage, ibid. The consummation of marriage is also demonstrated by the oath of the spouses, especially if it is found to be corroborated, page 361. The oath of the spouses is to be given the greatest consideration, also because...

[*Latin ed. p. 586*]

586 INDEX GENERALIS: It is demonstrated that even the faith of widows, which must be especially guarded, is perfected through marriage, even if they have previously lived together, so that they are not deprived of the remedy of a dispensation; for if one of the contracting parties, through his own malice, should feign consent to the marriage, it is not consummated, as is shown there.

Hence, there is no marriage if one of the contracting parties, although

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outwardly appearing to consent, does not truly consent in his heart: for it is not the external words or their sound that constitute proof in a hidden matter, but the mind and will that effect the marriage; Chapter 20 on betrothal, ibid. The contracting party who does not consent in his mind gravely sins, committing a sin of injustice in the contract, and a sin of sacrilege in the sacrament. Ibid.

Since the sacrament of marriage pertains to consent, the contracting parties ought to enjoy full freedom in this matter, in which a greater liberty is reasonably required than in other civil agreements, which can be rescinded by the authority of a judge or by the disagreement of the parties; this is in agreement with Fagnano and Sánchez, who hold that spiritual marriage can be contracted solely by the one who gives, when a child is received in a curatorial capacity, page 417. Indeed, according to rule 12 in 6, he who acts through another is considered to be acting through himself; therefore, only the godfather, designated by the parents, can validly contract a spiritual marriage through a procurator, ibid. This also seems to be inferred from reason and from absurdity: from reason, because he who contracts marriage through a procurator truly contracts it; and from absurdity, because if the godfather were not present, there would be no godfather, and if the procurator were not the godfather, he would not be a procurator.

[*Latin ed. p. 587*]

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He intends to fulfill the role of godfather, whether in his own name or in another's name - ibid. The application of the Mass for the people is so personal that the Sacred Congregation of the Council has often condemned as legally irregular the custom of having this obligation fulfilled by another, page 335. For, it is prescribed by the Council of Trent that all those to whom the care of souls has been entrusted, and not others, should know their flocks and offer sacrifice for them, unless they are legitimately hindered, ibid. Therefore, given the opportunity, the Sacred Congregation deems it necessary to urge such pastors of souls to personally fulfill all parochial duties, especially the Mass for the people, ibid. 587. It cannot proceed unless against a legitimately confessed or convicted person, according to Cardinal De Luca in *De Beneficiis*, discourse n. 4, ibid. It is clear from the Council of Trent, Session 25, chapter 14, that clerics who are concubinaries should first be admonished, then suspended, and finally, if they do not repent, permanently removed from their benefices.

507. Pension: A penalty of deprivation of a benefice cannot be imposed unless the cause is grave. A perpetual pension granted in addition to the endowment of a benefice or prebend constitutes a movable fund, and does not differ from a true census, p. 36. In accordance with the decree *Cum

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nuperrimis*, a proportional reduction of pensions must be instituted after a proper conciliar elevation, ibid. For serious reasons, especially when grievances are presented by persons of prominence in the ecclesiastical hierarchy, a revision, as if by restitution to the original state, is sometimes granted, it is well known. Regarding the parish, with respect to deprivation and preservation of rights, as is gathered from canon *Inventum quaest.* 7; in which it is said, with regard to a priest who has obtained a church - which, if justly obtained, unless through his own fault, he may lose canonically, and this not without severity, E- ibid. 506. Therefore, before a sentence of deprivation, it must be established by full, or "conclusive," proof of the offense, because this is the ordinary penalty, page ibid. This is done because of that equity which is the supreme law in ecclesiastical judgments, so that the affairs of each, and especially justice, may not suffer from a lack of thorough investigation, ibid. The general rule of law is that one who has been found to have a just exception, and not repugnant to natural equity, is no longer a debtor. p. 208. An unjust exception, and one repugnant to natural equity, seems to be...

[*Latin ed. p. 588*]

INDEX GENERALIS 888: The wax of Pompeii, which sustains the pressed image, having been attributed to others, is to be observed, page 271. The Archpriest, who holds the pension, and those competent for the matter at the time, are to be considered, but not the parish economist, ibid. Therefore, according to a well-known principle of law, the economist is not considered to do an injury to another in receiving the pension, which he obtains by his office, and thus he uses it, ibid. There is no distinction between the Archpriest and the parish economist with regard to the parish office, page 209. Regarding Religious Orders: To resolve questions of precedence among parish priests, more attention should be given to the dignity and antiquity of the parish church, rather than to the parish priests themselves, page 141. All dignity and prerogative in a priest, as such, derives from the Church which he represents, and each is spiritually united to it, page 142. From the *Caeremoniale Episcoporum*, to which the force of universal law is attached, and from the resolutions of the Holy Congregation of Rites, it is determined that only the Cathedral Church's cross should be carried whenever the Cathedral Chapter participates in processions, ibid. By the same Holy Congregation of Rites, a custom contrary to the *Caeremoniale* is called an abuse, which must be completely removed by the local Ordinaries, according to the Apostolic Constitution of Benedict XIII, ibid. Apostolic Privilege: The Apostolic Bull grants an indulgence to the Religious Order, and the Religious Order, being exempt from the jurisdiction of the Bishops, remains subject in both respects to the immediate jurisdiction of the Roman Pontiff, page 274. The Roman Pontiff, after the Bishops, governs Religious Orders through

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commissaries or delegates, such as the superiors general, provincials, and local superiors of each Order, who are truly and properly considered as prelates of each approved and exempt religious order, ibid. The exemption of religious orders, being valid for both forums, makes the superiors of the Order the Ordinaries, to whom alone the right belongs to approve confessors for receiving the confessions of members of the same Religious Order, ibid. Therefore, no confessor, even if approved by the Bishop, can validly hear the sacramental confessions of a religious, unless he has received power to do so from the superiors of that Order, ibid. However, a religious of this Order can validly receive his own confession.

[*Latin ed. p. 589*]

INDEX 61. The sin of a religious receiving the sacraments from an external priest, whenever it is either impossible or exceedingly difficult to have a confessor of his own religious order, ibid. Residence. It is known to no one that priests are made subjects of the bishops through sacred ordination; and subjects, without the consent of their superior, cannot withdraw themselves from the authority of the bishop. page 121. Therefore, bishops can strictly prohibit clerics from leaving, and can retain them, even unwillingly, provided there is a just cause and they are provided with suitable support, ibid. Likewise, it is within the power of ordinaries to forbid the exercise of sacred functions to a cleric who belongs to another church, and to those who, without knowledge, leave that church, according to the words of the Council of Trent, Session 23, chapter 16: "that if anyone deserts his place without the consent of the bishop, let him be forbidden to exercise sacred functions." ibid. The Sacred Congregation has declared in similar cases that priests who are rebellious to the authority of the bishop can be subjected to censures, so that they may return to their own diocese as soon as possible, ibid. It cannot be doubted that a censure imposed by a particular precept binds the subject, even if he is residing in another diocese: for this censure, imposed in this way, follows the person as a shadow. ibid. 589. Suspension from informed conscience. Almost unanimously, the interpreters of the sacred canons hold that, according to the Council of Trent, Session 14, chapter 1, concerning appeals, bishops can not only prohibit advancement to the orders, but can also decree suspension from the orders received for any reason, even for a hidden crime, extrajudicially, in any way. page 314. This was confirmed by the constant interpretation of chapter 1 of session 14 by the Sacred Congregation, which declared that the power of bishops is equal, whether to prohibit advancement to the orders, or to suspend from the orders received. ibid. Although the Sacred Congregation, in the decree *Nullius*, of February 3, 1593, in chapter 1 of session 14 of the Council of Trent, considered prohibitions, both temporary and permanent, to have a place in suspensions, it seems that, from more recent resolutions, such suspensions cannot be permanent, ibid. Likewise, in the aforementioned

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Nullius of February 3, 1593, the Sacred Congregation declared: "a temporary prohibition proceeds from a fault, and a suspension is said to be that in which the bishop, without being known, prohibits, or suspends." ibid. Hence, it is easily understood that, whatever the form of the judicial process may be.

[*Latin ed. p. 590*]

59. The General Index indicates the necessity, concerning the suspension imposed by Bishops through this authority, for any reason, even extrajudicially, and in whatever manner this suspension is understood, whether as a censure or as a punishment. Ibid. In the case of public crimes combined with hidden ones, Bishops can use suspension based on informed conscience, pursuing the hidden crimes, setting aside others: for it is sufficient that the censure be proven by one crime, since each is sufficient to incur it. Ibid. A judicial process must be followed according to current jurisprudence, since all crimes are public; and although the clause of Trent states that, for any reason and in any way, it is issued so as to seem to include even public crimes: nevertheless, if this power includes a hidden crime, which could not be punished before Trent, all the more can it include a public crime. Ibid. All Doctors, and the Holy General Congregation itself, hold that there is no appeal, neither in the case of suspension, nor in the case of revocation, but only recourse to the Apostolic See, from the Bishop's judgment, proceeding according to the norms of chapter 1 of session 14 of Trent. Ibid. Such recourse, to be made directly to the Holy See, to which the Bishop is obliged to reveal the reasons for the suspension, suffices to compensate for the lack of an appeal: therefore, the accused is not in any way prevented from preparing his defense. p. 315. During the suspension, a priest who administers the sacraments becomes irregular, because in the case of such a suspension, there is no place for an appeal, at least in the case of a suspension. Ibid. Bishops cannot absolve the irregularity when the crime from which the irregularity arises is public; even if the act through which the irregularity occurs is hidden: for example, if a priest, publicly excommunicated, or notoriously a simoniac, secretly celebrates Mass; otherwise, if the crime is hidden. Ibid. A suspension imposed based on informed conscience, by which the Bishop prohibits advancement to the orders and the exercise of the reception, is maintained as long as it has been imposed, at least for one hidden crime, which is sufficient to incur it. p. 377. Against this form of extraordinary judgment, there is no appeal, but only recourse to the Holy See, to which the Ordinary is obliged to reveal the crimes on which the sentence is based. Ibid. Since in such a form of extraordinary judgment, there is no appeal, at least in the case of suspension, therefore, he who is struck by this censure becomes irregular, and performs divine services and administers the sacraments. p. 378. Testament. The making of a testament is highly fitting for men, as is shown in book 1 of the Code of

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Canon Law concerning the Holy Church. "Nam" for this is what is most fitting for men.

[*Latin ed. p. 591*]

INDEX GENERALIS 891 » to those who are obligated to give their votes, rather than to those who, being marked as superiors, cannot be chosen in the General Congregation of the Missionary Order, after they have already declared that they desire something else, it is permissible, which does not recur again, at their discretion. » p. 421. Thus, even though civil law establishes a certain form for testaments and introduces a method, nevertheless, the validity of a testament stems from natural and civil law, as history teaches; which recounts that testaments were made among various peoples before civil laws were established. » ibid. Moreover, according to natural law, a testament, as an act of a human being, is valid only if the person making it possesses the use of reason; hence, the mentally incapacitated, the insane, and infants are, by the very nature of things, prohibited from making testaments. » ibid. ● And also, civil law, in its wisdom, adds, in law 2 ff., that a testament must be made... In the one who makes a testament, the integrity of the mind and the health of the body are required at the time when the testament is made; and therefore, one who is not in good health of mind cannot make a testament. » ibid. In Aversa, Vicars Apostolic, though lacking the episcopal order, are restored to the right of passive voice concerning the aforementioned offices, because the Constitutions of the Mission prescribe that the Superior General should consult with the Vicars Apostolic, concerning the election of the General, unless the Roman Pontiff orders it, in virtue of holy obedience. » in Aversa 17 ff. ibid.

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